

BASELIDES MARCELO, JUANITO BOLANO, EXEQUIEL NAJE, FELIX SAN MATEO, PASCUAL ANDRADE, MARCIANO FERROLINO, ISIDRO BONGAY, ANTOLIN BALUBAR, IRINEO MARQUEZ, JOSE T. RICO, ULPIANO GUT...*G. R. No. L-9448. May 23, 1957*

Ponente: FELIX, J.

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On January 25, 1955, plaintiffs instituted this action in the Court of First Instance of Manila against the defendants, alleging in the complaint that they were employees of the Philippine National Red Cross; that since March 22, 1947, they had rendered overtime services from 2 to 16 hours every day, including Sundays and holidays, for which each of the plaintiffs should be paid the sum of P5,000, more or less, value of their overtime work already earned; that in the case of Esteban Madera said amount of P5,000 includes underpayment not paid to him as provided for in the Minimum Wage Law, and as defendants allegedly failed and refused to pay said overtime work and underpayment, they prayed the Court to render judgment (a) enjoining defendants from dismissing or threatening to dismiss plaintiffs; (b) ordering the defendants to pay each plaintiff the sum of P5,000, more or less; (c) compelling the defendants to pay additional sum of P6,400 as attorney's fees; and (d) granting unto the plaintiffs such other reliefs as may be deemed proper in the premises.

Before answering the complaint the Solicitor General's office filed for the defendants for motion for bill of particulars in order to enable them to plead intelligently or prepare adequately their responsive pleading thereto, giving as a reason for the motion that aside from the fact that the demand of P5,000 for each of the plaintiffs (P60,000 for all of them) is fantastic, the complaint does not state who among the said plaintiffs have rendered 16 hours' work during the said number of years and did not specify the number of supposed overtime hours rendered by each of them, the rate of salaries and wages during the entire period for which such overtime is claimed; the time during which regular and overtime work have been performed during Sundays and official holidays; and the exact amount of undertime, apart from the overtime, supposedly due to plaintiff Esteban Madera.

This motion for a bill of particulars was objected to by the plaintiffs- and their opposition was retorted by the defendants, after which the Court by order of February 18, 1955, directed plaintiffs to amend their complaint by making sufficient allegations on the points indicated by the defendants in paragraph 5 of their motion for bill of particulars. After plaintiffs' motion for reconsideration of this order was denied, plaintiffs submitted a so-called bill of particulars indicating the alleged aggregate total of overtime hours rendered by each plaintiff (such as 14,000 hours, 12,000 hours, 10,000 hours, 8,000 hours or 5,000, more or less, without reference to the dates in which the laborer actually rendered said overtime hours), the rates of salaries per month during the entire period of their employment (or daily, as in the case of Esteban Madera), and the overtime performed by plaintiffs (undoubtedly, referring to all of them) during Sundays and holidays, which started at 8:00 a.m., Sunday or holiday till 4:00 p.m., the next day—Monday or otherwise—equivalent to 32 hours' continuous service, and stating that the underpayment of Esteban Madera amounted to P2,000, more or less.

Upon receipt of this bill of particulars and without considering if it was sufficiently explicit or clear to enable defendants to answer, counsel for the latter filed on March 23, 1955 a motion to dismiss on the ground that the complaint did not allege facts sufficient to constitute a valid cause of action.

This motion was objected to by plaintiffs, and after both parties exhausted their arguments in support of their respective contentions, the Court by order of April 18, 1955, dismissed the complaint filed by the plaintiffs without special pronouncement as to costs. The Court reasoned out its order as follows:

"It will be noted from the above provisions (Sec. 2 of Commonwealth Act No. 444) that the law 'shall apply only to all persons employed in any industry or occupation, whether public or private * * *.' The plaintiffs themselves admit that the defendant, in truth and in fact is an organization entirely devoted to charity. It is not a profit making organization; its funds are dependent on the voluntary contributions of the public. Plaintiffs maintain that the Philippine National Red Cross, Inc., is not among those mentioned in the exception and therefore should be deemed to 'be one of those upon whom the provisions of the law shall apply. The contention is, in the opinion of the Court, unfounded. The Court believes and so holds that the laws, in referring to persons employed in an industry or occupation, does not refer to the EMPLOYEE HIMSELF but to the EMPLOYER who must be engaged in an industry or occupation. The exception mentioned in Section 2 of the Act refer to the employees who, although employed in an industry or occupation, do not fall under the general provision and are not entitled to the benefits of the law if they are 'farm laborers, laborers who prefer to be paid on weekly basis, and persons in the personal service of another and members of the family of the employer working for him. To hold the National Red Cross, Inc., subject to the operation of the law would be tantamount to curtailing its activities to the prejudice of the welfare and interest of the general public, particularly the victims of a catastrophe. One may imagine, for instance, the result if those persons now engaged by the Red Cross in its relief work among the victims of the recent earthquakes should refuse to work overtime unless paid. The funds of the Red Cross, meager as they are, would be consumed in overtime pay instead of being spent for the relief of those afflicted. Such a result certainly cannot be said to have been intended by the Legislature."

After plaintiffs' motion to set aside the order and for trial was denied, plaintiffs brought up this case to Us and in this instance their counsel maintains that the lower Court erred:

1. In holding that the Philippine National Red Cross is not covered by Commonwealth Act No. 444 otherwise known as the Eight-Hour Labor Law;
2. In holding that the Philippine National Red Cross; is not covered by Republic Act No. 602 otherwise known as the Minimum Wages Law; and
3. In dismissing plaintiffs-appellants' complaint.

As may be seen from the foregoing, the only question at issue in this appeal refers to the applicability of the provisions of the Eight-Hour Labor Law to charitable institutions like the defendant Philippine National Red Cross.

Section 2 of Commonwealth Act No. 444 upon which plaintiffs base their cause of action, reads as follows:

"Sec. 2. This Act shall apply to all persons employed in an industry or occupation, whether public or private, with the exception of farm laborers, laborers who prefer to be paid on piece work basis, domestic servants and persons in the personal service of another and members of the family of the employer working for him."

The solution of the whole controversy depends upon whether defendant Philippine National Red Cross is engaged "in an industry or occupation", as this phrase is used in the section just quoted.

Plaintiffs submit to Our consideration the following: (1) are plaintiffs-appellants the persons excepted from the operation of the Eight-Hour Labor Law as provided for in Section 2 thereof?; and (2) are plaintiffs-appellants employed in any industry or occupation? Answering these questions counsel for plaintiffs states that with regard to the first, the answer is too obvious to require proof, for plaintiffs-appellants have been in the employ of the Philippine National Red Cross as janitors, drivers, technicians and manual laborers. "Occupation", as defined, is a trade, calling, vocation, profession, employment or business by which one generally earns his living (67 C.J.S. 76), and under this definition plaintiffs' employment with the Philippine National Red Cross is certainly an occupation. Hence, counsel argues, plaintiffs are not the persons excepted in said Section 2 of the law.

As to the second question, plaintiffs do not dispute that the Philippine National Red Cross "is not engaged in any industry, for the sole purpose for which this institution has been created, as known the world over, is to perform purely humanitarian work. Hence, it could not be said that plaintiffs-appellants are employed in any industry engaged in by the Philippine National Red Cross." What plaintiffs, however, maintain is that they are employed by the Philippine National Red Cross in its occupation of performing humanitarian work. Viewed in the light of the meaning¹ of the word "occupation" as given before, plaintiffs ask may it then be said that the Philippine National Red Cross is engaged in an occupation? Plaintiffs also claim that the answer is obvious, for performance of humanitarian work by the Philippine National Red Cross, though not for any financial reward, does not cease to be an occupation. In support of their contention plaintiffs submitted in the lower court the communication of the Secretary of Labor, Jose Figueras, dated November 18, 1952, wherein this Department Head held the opinion that Commonwealth Act No. 444 applies "to all persons employed in any industry or occupation", whether public or private, with the exception enumerated in the law, such as farm laborers, laborers who prefer to be paid on piece work basis, domestic servants, etc., and that on the basis of this provision, the fact that the Philippine National Red Cross is a charitable or non-profit institution does not draw its workers away from the coverage of the law. This question, according to said Secretary, has been settled by this Court in the case of *Elks Club vs. Rovira*, (80 Phil., 272, 45 Off. Gaz. No. 9, p. 3829).[1]

Plaintiffs further argue that the aims and purposes for which the Philippine National Red Cross was created certainly are noble and lofty and become more so when viewed against the background of a material world. But in the attainment of the same, however noble and lofty, such end should never justify the means. If the Philippine National Red Cross must be uncharitable to its employees in order that it may be charitable to others, this institution would cease to be consistent with the purpose for which it was created. But the Philippine National Red Cross can attain its noble aims and purposes without being uncharitable to its lowest paid employees.

On the other hand, defendants call attention to the fact that under Republic Act No. 95, the defendant Philippine National Red Cross was created as a public corporation charged with the duty of assisting the Republic of the Philippines in "discharging the obligations set forth in the Geneva Red Cross Convention and to perform such other duties as are incumbent upon a national red cross society", its main purposes being, among others: (a) to furnish volunteer aid to the sick and wounded of armed forces in time of war, in accordance with the spirit of and under the conditions prescribed by the Geneva Red Cross Convention; (b) to act in matters of voluntary relief and in accord with the authorities of the Armed Forces as a medium of communication between the people of the Republic of the Philippines and their Armed Forces; (c) to establish and maintain a system of national and international relief in time of peace and in time of war; and (d) to devise and promote such other services as may be found desirable in improving the health, safety and welfare of the Filipino people.

Such being the ends and purposes of the creation of the Philippine National Red Cross, defendants claim that it would be stating the obvious to say that the defendant Red Cross is a purely charitable organization engaged exclusively in humanitarian work and never as a government entity carrying a trade, industry or occupation.

Defendants further state that the provisions of the law governing payments of overtime and extra compensation for work done during Sundays and legal holidays—as, embodied in Commonwealth Act No. 444—shall apply only to persons or corporations, whether public or private, which are engaged in any Occupation or Industry and defendant Red Cross not being a government entity engaged in any "occupation or. industry", but in purely humanitarian and charitable work, it may not be held liable for payment of overtime services to its employees, assuming again *arguendo* that any such overtime work was performed.

Besides—counsel for defendants continues—the funds supporting the Red Cross come from voluntary contribution from the government and from every man, woman and child throughout the world, irrespective of race and creed, and to hold that the Red Cross, like other public or private entity engaged in "industry or occupation", is liable for overtime pay to its workers and employees, would be to render the noble purposes of its existence useless and illusory, for what should be otherwise devoted to its mission of mercy, could hardly cover up for such overtime wages and, certainly, Congress could not have thought of applying the provisions of the Eight-Hour Labor Law, or any other labor law for that matter, to the Red Cross. As a persuasive authority counsel for defendants submits Opinion No. 102, series of 1954, of Secretary of Justice Pedro Tuazon holding the points of view just mentioned.

In passing upon these conflicting contentions, We can state beforehand that We fully agree with the trial Judge that the phrase employed (in an institution engaged) "in an industry or occupation", as used in section 2 of Commonwealth Act No. 444, does not refer to the employees but to the employer, who is the one that shall be engaged in an industry or occupation. There is no dispute that the Philippine National Red Cross is not engaged in any industry and the Gordian knot of the problems has to be cut by Our determination of whether the Philippine National Red Cross is engaged in an occupation, as this word is used in, or according to the meaning Congress intended to impart to said section 2 of Commonwealth Act No. 444.

As stated by appellants, in common parlance We all may agree that the Philippine National Red Cross is engaged or employed in the occupation of performing humanitarian work.

"Granting that the 'Salvation Army' is not engaged in trade and that it has no profession, and without deciding whether or not it has a business, it must be held .that its activities are described by the word 'occupation'". (67 C. J. S.. 76).

But is such occupation what was meant by said word in aforementioned provision of the Eight-Hour Labor Law?

"OCCUPATION. The word may be employed as referring to the act or process of occupying¹, the state of being occupied, occupancy or tenure; and as used in this sense the word is denned in the C.J.S. title Property, par. 14, also 46 C.J. p. 895 note 72—p-. 896 note 96".

"The word 'occupation' also is employed as referring to that which occupies time and attention; a calling or a trade; and it is only as applied in this sense that the word is discussed in the following paragraphs" (67 C. J. S. 74).

"OCCUPATION has been held properly applicable to various activities and pursuits such as the practice of medicine or dentistry, farming, undertaking¹ and store-keeping, and in other instances, the term has been held inapplicable." (67 C. J. S. 76)

"The word 'occupation' is frequently defined as meaning the business in which one principally engages in order to procure a living or obtain wealth (Cohen vs. State, 53 Tex. Cr. 422); the trade, calling, vocation, profession, office, employment, or business by which one generally earns his living (Johnson vs. State, 138 Tex. Cr. 370; Anderson va. State, 70 Tex. Cr. 250; Shed vs. State, 70 Tex. Cr. 10); whatever one follows as the means of making a livelihood," (Sovereign Camp W.O.W. vs. Craft, 20S Ala. 467)

"The word 'occupation' has reference to the principal or regular business of one's life, or that to which one

devotes his time and attention, such as trade, profession, or other vocation or calling, or that which principally takes up one's time, thought, and energy, specially one's regular business, or employment, or whatever one follows as a means of making a livelihood (Benefit Ass'n of Ry. Employees vs. Seerest, 239 ILj. 400). The word particularly refers to the vocation, profession, trade, or calling in which a person is engaged for hire or for profit (Scott vs. Freeport Motor Car Co. of Freeport, 392 111. 332), and it has been repeatedly held that a person's principal business and chief means of obtaining a livelihood constitute his occupation—Farmers Automobile and Inter-Insurance Exchange vs. Calkins, 39 Cal. Apr., 2d 390" (67 C. J. S. 75-76).

From the foregoing authorities We see that the word "occupation" ordinarily implies the idea of one's employment in a principal or regular business or the dedication of [one's] time and attention to a trade, profession or calling which is taken up as a means of making livelihood, or for profit, or for the obtaining of wealth. In other words, the weight of authority is to the effect that in its legal sense and as used in labor laws, the term "occupation" ordinarily involves the idea of gain, profit or return for the time, attention and energies devoted in the performance of the occupation by either the master or the servant concerned. For these reasons We share in the aforementioned opinion of the Secretary of Justice, that the Philippine National Red Cross is not subject to the Eight-Hour Labor Law. It is neither in business, nor an industrial enterprise organized for profit, but engaged in purely humanitarian work. Of course, as said Secretary of Justice further explains:

"This does not mean that it cannot extend the benefits of the Act to its employees. As pointed out in Opinion No. 142, series of 1939, Commonwealth Act No. 444 may be extended to employees and laborers of the Government as a matter of administrative policy if (1) the current appropriation so allow, and (2) if it is consistent with public interest. (See also Op. of Sec. of Justice No. 175, series of 1939). Accordingly, as a matter of policy and in the exercise of its power to determine the compensation of the paid staff of the corporation (Sec. 6, Rep. Act No. 95), the Board of Governors of the Philippine National Red Cross may extend the benefits of the Eight-Hour Labor Law to its employees if, and to the extent that, the financial condition of the corporation would warrant."

We, therefore, declare that plaintiffs-appellants cannot demand as a matter of right the application to them of the provisions of the Eight-Hour Labor Law.

Plaintiff's second assignment of error refers to an alleged declaration of the trial Judge "that the Philippine National Red Cross is not governed by Republic Act No. 602 otherwise known as the Minimum Wage Law". We have carefully gone over the order appealed from and We do not find therein any reference to said Act.

Wherefore, the order appealed from being in consonance with the law on the matter, the same is hereby affirmed, without pronouncement as to costs. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista, Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur. Order affirmed.

[1] This case has no bearing on the points in controversy herein, for it refers to whether or not the employees of the Elks Club could be considered as domestic servants within the meaning of section 2 of Act No. 444 and not whether the Elks Club was an industrial organization, taking into consideration its purpose and activities.

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