

RHEA D. CHIVA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 4TH DIVISION, POWER TELECOM SHOP CORP., VITECH CELLULAR ACCESSORIES GENERAL MERCHANDISE CORP., AND VINCENT P. ...

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GALAPATE-LAGUILLES, J:

A person's entitlement to labor standards benefits under the labor laws presupposes the existence of employer-employee relationship. Petitioner Rhea D. Chiva's employment status is the crux in the present Petition for Certiorari assailing the Decision dated June 18, 2012[1] rendered by the National Labor Relations Commission in NLRC LAC No. 01-000299-12, NLRC NCR Case No. 05-06774-11 as well as its Resolution dated August 16, 2012,[2] which denied her Motion for Reconsideration.

The present legal controversy sprung from a Complaint[3] for Illegal Dismissal, Non-payment of Salary and other Monetary Benefits, Illegal Deduction, Damages and Attorney's Fees filed by Rhea D. Chiva (Chiva) before the Regional Arbitration Branch, National Capital Region, of the National Labor Relations Commission against Power Telecom Shop, Corp., Vitech Cellular Accessories General Merchandise Corp., and Vincent P. Tang (private respondents).

In her Position Paper,[4] Chiva alleged that Power Telecom Corporation (Power Telecom) and Vitech Cellular and Accessories General Merchandise Corporation (Vitech) hired her as a cellphone technician on March 31, 2007 as shown by the Certification dated September 21, 2010.[5] She worked from 10:00 in the morning to 8:00 in the evening and received a daily wage of Four Hundred Pesos (P400.00). Apart from her duty as cellphone technician, Chiva contended that she was likewise tasked to deposit the daily sales proceeds of Vitech in the account of Vincent Tang and to pay the latter's bills. She was also duly authorized to sign the official receipts issued to their customers. According to Chiva, on April 29, 2011, Mrs. Shiela Apuya Tang, the wife of Vincent Tang, verbally dismissed her from work. She averred that on the same date, Mrs. Tang brought her to the Department of Labor and Employment and offered her Sixty Thousand Pesos (P60,000.00) in the presence of the DOLE personnel, a certain Mr. Job Faulan, who convinced her to accept the offer. Initially, Chiva agreed to the offer and she was told to come back on May 3, 2011 to receive the payment, but she later changed her mind. Instead, she filed the instant case, arguing that she was illegally dismissed and that her right to due process was violated.

The private respondents Vitech and Tang also filed their Position Paper[6] arguing, in the main, that there was no employer-employee relationship between them and Chiva as the latter worked as a free-lance cellphone technician servicing the customers of the two corporations which, incidentally, had separate and distinct personalities from each other. According to them, Vitech, Power Telecom and Chiva agreed on a profit sharing scheme of 50-50; the corporations received 50% of the net income of the total daily repair services rendered by Chiva while the remaining 50% went to the latter. This arrangement went all throughout from the time of Chiva's engagement as a free-lance cellphone technician until April 2011 when she decided to transfer to another entity.

Chiva filed a Reply[7] insisting that Vitech's and Tang's assertion that she was an independent contractor did not outweigh the documentary evidence showing that she was hired as a regular employee of the two corporations. She further posited that as an illegally dismissed employee, she was not required to prove his innocence as the employers' case must stand or fall on its merits and not on the weakness of her defense. In arguing along this line, Chiva invoked the entrenched rule in labor cases that "the onus of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and, therefore, illegal." [8]

The private respondents likewise filed their reply[9] vehemently denying Chiva's asseveration that Mrs. Tang, Vitech's corporate secretary, offered her P60,000.00 in the presence of Mr. Job Fallar (not Faulan as stated in Chiva's position paper). According to them, Chiva and Mrs. Tang went to the DOLE to clarify Chiva's demand for separation pay as she intended to sever her business relationship with Vitech after she was confronted by the management for not depositing their 50% share. Mr. Fallar, the DOLE personnel who entertained their concern, opined that Chiva was not entitled to her monetary claim as there was no employer-employee relationship between her and Vitech, and advised her to proceed to the NLRC Office to file the appropriate case for labor compensation. The private respondents also disavowed Chiva's insistence that the Certification dated September 21, 2010 was a testament to her regular employment as the said certification was issued for the sole purpose of helping Chiva in securing a permit with the National Telecommunications Commission.

On October 28, 2011, Labor Arbiter Edgardo M. Madriaga rendered a Decision[10] declaring that Chiva was not a regular employee of the private respondents, thus, she was not entitled to salaries and benefits due to a regular employee. The Labor Arbiter, however, ordered the refund of Chiva's cash bond. The fallo of the Decision reads:

WHEREFORE, premises considered, the complaint is hereby dismissed for the foregoing reasons.

Respondent Power Telecom Shop Corp. is directed to refund complainant her cash bond, computed below as follows:

"P500 x 49 months = P24,500.00"

SO ORDERED.[11]

Aggrieved, Chiva filed a Partial Memorandum of Appeals[12] before the NLRC arguing that she was a regular employee of the private respondents as her position was necessary and desirable in the course of their usual business. She insisted that a mere denial of employer-employee relationship did not overcome her evidence which positively identified the private respondents as her employers.

Unsatisfied by Chiva's arguments, the NLRC dismissed her appeal and affirmed in toto the Decision of the Labor Arbiter on the following ratiocination:

For all her claim of the status of a regular employee, complainant failed to show that respondents controlled

the means and method by which she performed her work which, on the contrary appeared to be dependent on her skill as an experienced cellphone technician under the 50-50 net profit sharing scheme. Our circumspect review of the particular circumstances of the case reveals that complainant was, indeed, a job contractor instead of a regular employee of respondents whose adopted procedure for the repair of mobile phones was not restricted by respondents.

Moreover, the existence of an employer-employee relationship having been denied by respondents, the burden to prove the same has been shifted to complainant. We are in accord with the Labor Arbiter's finding that complainant failed to produce documentary proof of regular employment available to regular employees, such as SSS, Pag-ibig and Philhealth registration. Instead of presenting an identification card, copies of payslips and other similar documents to establish [her] engagement by respondents, complainant curiously mustered only to present machine copies of respondent VCA's mobile phone's statement of account and official receipt issued for the payment of billing charges appearing thereon xxx, respondent VCA's official receipt signed and issued by complainant xxx and bank deposit slips under the account of respondent Tang xxx. While admittedly respondent PTSC has issued a Certificate of Employment attesting that complainant is its employee xxx, it has been satisfactorily explained that the latter merely accommodates (sic) upon her importuning and pleading for the issuance of the same in order to secure an NTC permit as a Cellular Technician.[13]

Chiva sought reconsideration[14] of the adverse Decision of the NLRC but the same was likewise denied per Resolution dated August 16, 2012. Hence, this present recourse that raises the following issues:

I

THE HONORABLE PUBLIC RESPONDENT NLRC FOURTH (4th) DIVISION WITH ALL DUE RESPECT SERIOUSLY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE CASE OF PETITIONER DESPITE THE EVIDENCE ON RECORD SHOWING THAT PRIVATE RESPONDENTS FAILED THE RESPONSIBILITY OF PROVING THAT IT VALIDLY DISMISSED PETITIONER.

II

THE HONORABLE PUBLIC RESPONDENT NLRC FOURTH (4th) DIVISION WITH ALL DUE RESPECT SERIOUSLY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO AWARD MONEY CLAIMS OF PETITIONER.[15]

Petitioner Chiva insists vehemently that her evidence, in contrast to private respondents' mere denial, substantially proves that the latter controlled the means and methods by which she performed her work.[16] She also contends that she could not be considered a free-lance technician as there was no agreement between the parties to that effect. And even if she was engaged as a free-lance technician, the nature of her work as a cellphone technician is necessary and desirable in the usual business of the private respondent, thus, converting her status into regular employment.[17]

The only issue proffered by the petition is whether Chiva was a regular employee of the private respondents.

In filing a complaint before the Labor Arbiter for illegal dismissal based on the premise that she was an employee

of respondent, it is incumbent upon Chiva to prove the employee-employer relationship by substantial evidence.[18] She has the burden to establish her affirmative allegation as the rule of thumb remains that “whoever claims entitlement to the benefits provided by law should establish his or her right thereto.”[19]

Here, Chiva miserably failed to prove by the required quantum of evidence the existence of employer-employee relationship,[20] the determination of which invariably rests on the four-fold test, to wit: [1] the selection and engagement of the employee; [2] the payment of wages; [3] the power of dismissal; and [4] the power to control the employee's conduct, or the so-called "control test", considered to be the most important element.[21] Although no particular form of proof is required to prove the existence of an employer-employee relationship,[22] a finding that such relationship exists must be based on substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[23]

We pore over the records and find that Chiva had not presented competent evidence that would show even a semblance of proof that she was hired by the private respondents as a regular employee. The documents she submitted, i.e. the official receipts indicating her as an authorized signatory, the bank deposit slips under the name of Vincent Tang to show that she was required to deposit the daily sales income of Vitech, Globe billing of Vincent Tang, are far from the kind of evidence proving employer-employee relationship. If, indeed, she had been working as a regular employee of the private respondents, Chiva could have easily submitted the pay slips or salary vouchers indicating that she received a daily wage of P400.00 as she stated in her Position Paper as well as her SSS membership and withholding tax certificates showing private respondents as her employers. Unfortunately, not one of these indicia of employment was submitted by Chiva. In *Lopez v. Bodega City*,[24] the Supreme Court ruled that petitioner's assertion of employer-employee relationship was negated by the absence of substantial evidence supporting her claim, thus:

Indeed, if petitioner was really an employee of respondents for that length of time, she should have been able to present salary vouchers or pay slips and not just a single petty cash voucher. The Court agrees with respondents that petitioner could have easily shown other pieces of evidence such as a contract of employment, SSS or Medicare forms, or certificates of withholding tax on compensation income; or she could have presented witnesses to prove her contention that she was an employee of respondents. Petitioner failed to do so.

Moreover, the Certification dated September 21, 2010 issued by Vincent Tang to Chiva will not bolster the latter's claim of regular employment. The said Certification was not couched in a language categorically admitting that Chiva was working in the company as a regular employee. As explained by the private respondents, which was sustained by the labor tribunals, the Certification merely stated that Chiva “worked as Cellphone Technician” with the private respondents; and that the Certification was issued not for the purpose of establishing an employment relationship but for the sole purpose of helping Chiva to comply with the requirement for securing an NTC permit. The fact that Chiva worked in the premises of the private respondents does not necessarily prove employer-employee relationship. As held in *Javier v. Fly Ace Corporation*,[25] a mere presence at the workplace, without any other proof, falls short in proving employment therein.

Also, Chiva failed to persuade Us that the private respondents exercise the power to control the performance of her work. It was a settled rule that the power to control the employee's work performance, both with respect to the means and manner, and the results of the service, is the primary element in determining the existence of employer-employee relationship.[26]

Notably, Chiva failed to describe the manner how she performed her work as dictated by the private respondents.

It was not shown that Chiva was governed by the company policy of the private respondents as well as its existing terms and conditions of work that covered their regular employees. The only ineluctable conclusion that could be deduced therefrom is that, it was not the private respondents which set Chiva's working conditions such as the number of hours of work, rest day, the amount of work to be done in a given period and the manner and means of how the work is to be done. It likewise baffles Us that Chiva did not submit her daily time record which could have proven a routinary schedule consistent with her claim that she was an employee. The absence of the daily time record only proves that she worked on her own time, free from the control of the private respondents. Thus, in *Filipinas Broadcasting Network, Inc. NLRC, et al.*,^[27] the Supreme Court ruled that the element of control is absent where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work.

There is likewise no proof that the private respondents had wielded the power to dismiss. Contrary to Chiva's bare-faced assertion, the private respondents expressly posit that Chiva was not dismissed. It is difficult to believe if not ridiculous that an employer would still bring an employee to the DOLE for an ostensible intention to seek guidance if there was an intention to dismiss her. We are convinced that Chiva voluntarily severed her business arrangement with the private respondents and in her attempt to demand separation benefits from them, Mrs. Tang brought the matter to the DOLE for clarification.

We also find no legal justification to Chiva's asseveration that since she performed a work desirable or necessary to the usual business of the private respondents, she should be deemed as the latter's regular employee under the purview of Article 280^[28] of the Labor Code.

We must stress that Article 280 of the Labor Code is not the proper standard in the determination of the existence of employer-employee relationship as it merely categorizes employees into regular, project or casual. This labor provision comes into play when the individual's employment is not disputed. Besides, as said, the mere hiring of a person to render services for and in behalf of another, no matter how necessary for the latter's business, does not necessarily make the person an employee.^[29] This is true in legitimate labor contracting and agency agreement.

As a final note, We remind petitioner that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers.^[30] Although We commiserate with her plight, We cannot tilt the scale of justice in her favor when the employer is in the right, mindful as We are that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.^[31]

WHEREFORE, premises considered, We DISMISS the instant Petition for Certiorari for lack of merit.

SO ORDERED.

Librea-Leagogo, (Chairperson) and Diamante, JJ., concur.

[1] Rollo, pp. 23-32.

[2] *Id.*, pp. 33-36.

[3] *Id.*, pp. 37-38.

[4] *Id.*, pp. 40-51.

[5] *Id.*, p. 52.

[6] *Id.*, pp. 57-63.

- [7] Id., pp. 86-91.
- [8] Id., p. 88.
- [9] Denominated as Vigorous Comment and Reply to Complainant's Position Paper. Id., pp. 92-101.
- [10] Id., pp. 102-109.
- [11] Id., p. 109.
- [12] Id., pp. 110-121.
- [13] Id., pp. 30-31.
- [14] Motion for Reconsideration . Id., pp. 122-133.
- [15] Id., p. 12.
- [16] Id., p. 13.
- [17] Id., pp. 14-15.
- [18] Lopez v. Bodega City, G.R. No. 155731, September 3, 2007.
- [19] Javier v. Fly Ace Corporation, G.R. No. 192558, February 15, 2012.
- [20] People's Broadcasting (Bombo Radyo Phils., Inc.) v. The Secretary of the Department of Labor and Employment, et al., G.R. No. 179652, May 8, 2009.
- [21] Filipinas Broadcasting Network, Inc. v. NLRC, et al., G.R. No. 118892, March 11, 1998, citing Singer Sewing Machine Company vs. Drilon, Chaguile, Jr., and Singer Machine Collectors Union-Bagui (SIMACUB), 193 SCRA 270, January 24, 1991; Mafinco Trading Corporation vs. Ople, 70 SCRA 139, March 25, 1976; Development Bank of the Philippines vs. NLRC, 175 SCRA 537, July 21, 1989; Rosario Brothers, Inc. vs. Ople, 131 SCRA 72, July 31, 1984.
- [22] Perpetual Help Credit Cooperative, Inc. v. Faburada, et al., G.R. No. 121948, October 8, 2001.
- [23] Equitable Banking Corporation, et al. v. NLRC, G.R. No. 102467, June 13, 1997.
- [24] Supra.
- [25] Supra.
- [26] Tongko v. Manufacturers Life Insurance Company (Phils.), Inc., G.R. No. 167622, January 25, 2011.
- [27] Supra., citing Encyclopedia Britannica (Philippines), Inc. v. NLRC, 264 SCRA 1, November 4, 1996.
- [28] Article 280 states that: "The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season."
- [29] Escasinas v. Shangri-la's Mactan Island Resort, et al., G.R. No. 178827, March 4, 2009, citing Philippine Global Communications v. De Vera, G.R. No. 157214, June 7, 2005.

[30] Magsaysay Maritime Corporation and/or Cruise Ships Catering and Services International N.V. v. NLRC and Rommel B. Cedol, G.R. No. 186180, March 22, 2010.

[31] Ibid.

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