

AKLAN COOPERATIVE MISSION HOSPITAL, PETITIONER, VS. HONORABLE SECRETARY OF DEPARTMENT OF LABOR AND EMPLOYMENT, THE REGIONAL DIRECTOR OF THE DEPARTMENT OF LABOR, REGION VI, MILDR...

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

Assailed in this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is the Order[1] dated May 27, 2011 in RO602-200811-CS-012, OS-LS-0012-0423-2010 which affirmed the March 10, 2010 Order[2] of the Regional Director of the Department of Labor and Employment (DOLE) Region VI in Case No. RO602-200811-CS-012, as well as the Resolution[3] dated October 14, 2011 denying petitioner's motion for reconsideration of the May 27, 2011 Order.

The antecedent facts and proceedings of the case as quoted from the order of the DOLE Regional Director, are as follows:

“This case arose out of a complaint inspection conducted at Aklan Cooperative Mission Hospital (respondent thereat) on March 13, 2008 wherein the following violations were uncovered:

General Labor Standards

- Underpayment of minimum wage to 24 workers;
- Underpayment of 13th month pay;
- Non-payment of regular and special holiday, and
- Non-payment of 5 days service incentive leave pay.

The records show that several hearings were conducted. During the hearings conducted on March 25 2009 and September 22 2009, respondent through its Administrative Officer submitted a certification and payroll for the period February 1-15, 2008 to show that the covered nurses were already absorbed as regular employees with the dates of effectivity of their engagement as regular employees. However, on the latter hearing, she manifested that they cannot anymore compute the deficiencies because the records that will be the basis of the computation were damaged by Typhoon Frank. She further stated that considering that the covered employees do not anymore complain and their salary rates were already adjusted, she requested that they be given time to confer with the employees and will submit the results thereof to the DOLE Regional Office. However, neither the results of the conference nor proof of compliance of the findings were submitted despite the sufficient time given. Hence, the DOLE Regional Office proceeded to resolve this case and computed the employees' differentials...”

Based on the foregoing, the DOLE Regional Director rendered the Order dated March 10, 2010 the dispositive portion thereof reads as follows:

“WHEREFORE, premises considered, AKLAN COOPERATIVE MISSION HOSPITAL located at Roxas Ave. Ext., Kalibo, Aklan is hereby ordered to pay Mildred Ambito and twenty-three (23) other employees the aggregate amount of FOUR HUNDRED FIFTEEN THOUSAND SIX HUNDRED SEVENTY-NINE PESOS AND THIRTY-THREE CENTAVOS (P415,679.33) representing their salary differentials, 13th month pay, regular holiday and special holiday pay and five days service incentive leave pay broken down as follows:

1.

MILDRED AMBITO

-

P15,241.00

2.

LEO EL CALUBA

-

P 7,717.00

3.

MYRENCE DESLATE

-

P20,825.00

4.

CONNIE FRANCO

-

P16,349.00

5.

QUIRINA FUENTES

-

P32,485.00

6.

LOU ANN LUMIO

-

P24,214.00

7.

MARIANNE SERVANO

-

P27,880.00

8.

JENNEIL ISRAEL

-

P12,198.00

9.

MAY ANN TOGOTO

-

P21,282.00

10.

CHRISTOPHER MATORRES

-

P15,883.00

11.

AUDREY ANN MATORRES

-

P17,790.00

12.

JENALYN NICOLAS

-

P34,129.00

13.

EVELYN CERVAS

-

P15,994.00

14.

GENEVIVE ORE

-

P19,744.00

15.

CHRISMAR IRUPANG

-

P16,512.00

16.

ROSELYN IGUIRON

-

P18,802.00

17.

JOHN SANTUYO

-

P15,714.00

18.

NORMIE JOY TUBAL

-

P20,611.50

19.

WILLIAM LEGASPI

-

P13,879.50

20.

GINA PRADO

-

P 7,101.50

21.

DONNA GRACE REMBULAT

-

P10,188.50

22.

AUDREY VILLEGAS

-

P10,316.75

23.

RYAN CHRISTOPHER UMayAM

-

P14,971.00

24.

CONNIE RELENTE

-

P 5,851.58

AKLAN COOPERATIVE MISSION HOSPITAL appealed⁴ the above said decision to the Office of the Secretary of the Department of Labor and Employment. The Secretary thereafter rendered the assailed order which affirmed the order of the Regional Director.

Petitioner moved for the reconsideration^[5] thereof but the same was denied per resolution^[6] dated October 14, 2011. Aggrieved, petitioner, filed the instant petition for certiorari and raised the following issues, to wit:

A. WHETHER OR NOT THE RESPONDENT HONORABLE SECRETARY OF THE DOLE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN SHE AFFIRMED THE ORDER OF THE DOLE REGIONAL DIRECTOR DIRECTING THE PETITIONER TO PAY RESPONDENT AMBITO AND 23 OTHERS SALARY DIFFERENTIALS, 13TH MONTH PAY, REGULAR HOLIDAY AND SPECIAL HOLIDAY PAY, AND 5 DAYS SERVICE INCENTIVE LEAVE PAY.

B. WHETHER OR NOT THE RESPONDENT HONORABLE SECRETARY OF THE DOLE ACTED WITH GRAVE ABUSE OF DISCRETION WHEN SHE AFFIRMED THE FINDINGS OF THE DOLE REGIONAL DIRECTOR THAT THE 24 VOLUNTEER NURSES ARE REGULAR EMPLOYEES WHO ARE ENTITLED TO SALARY DIFFERENTIALS, 13TH MONTH PAY, REGULAR HOLIDAY AND SPECIAL HOLIDAY PAY, AND 5 DAYS SERVICE INCENTIVE LEAVE PAY.

The petition is bereft merit.

The primary issue of the instant case boils down to whether or not the DOLE Regional Director and the Secretary of Labor could rule on the existence of an employer-employee relationship between herein petitioner and the private respondents. Corollary thereto is the issue of whether or not the Secretary of Labor was correct when she ruled that private respondents were employees of petitioner and are entitled to their monetary claims.

Petitioner contends that immediately upon receipt of the result of inspection, it has asserted to the Regional Director of the DOLE that private respondents were not its employees but were merely volunteer nurses per letter[7] dated March 17, 2008. Petitioner, through its representative has manifested that it had taken in the volunteer nurses upon the request of these nurses to gain experience and as a form of training.

Petitioner, in their appeal, has also asserted that herein private respondents were accommodated as volunteers to help them gain work experience. They were not hired as employees as the hospital had a full compliment already and there was no reason for it to hire additional workers as there were no vacant positions.

Petitioner further contends that the Regional Director and the Secretary of Labor through the Labor Inspector, merely assumed that private respondents are employees of the petitioner. They failed to consider that as volunteers, private respondents are project employees who are assigned to carry out a specific project or undertaking the duration or scope of which was specified at the time they were employed for the task. The duration of their voluntary hospital work was until the very moment their application for overseas employment will be approved.

Public respondent, on the other hand, averred in their comment[8] that it did not act with grave abuse of discretion in resolving the instant case. They further averred that pursuant to its visitorial and enforcement powers under Article 128 of the Labor Code, an inspection was conducted by the labor and employment officer pursuant to an inspection authority issued by the Regional Director. In the course of the inspection, the affected workers were interviewed and pertinent records of appellant were examined. As a result of which, the investigating officer uncovered several violations, one of which is the underpayment of wages to 24 workers of the hospital.

Public respondent further averred that the petitioner cannot question now the jurisdiction of the Office of the Secretary of Labor in resolving the issue of employer-employee relationship between petitioner and the private respondents. More so because it has willingly participated in the proceedings conducted at the Regional Office and at its office.

We agree with public respondent.

The Supreme Court in the case of PEOPLE'S BROADCASTING SERVICE (BOMBO RADYO PHILS., INC.)

vs. THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, THE REGIONAL DIRECTOR, DOLE REGION VII, and JANDELEON JUEZAN,[9] has clarified the authority of the Secretary of Labor to determine the issue of employer-employee relationship, as follows:

“Under Art. 129 of the Labor Code, the power of the DOLE and its duly authorized hearing officers to hear and decide any matter involving the recovery of wages and other monetary claims and benefits was qualified by the proviso that the complaint not include a claim for reinstatement, or that the aggregate money claims not exceed PhP 5,000. RA 7730, or an Act Further Strengthening the Visitorial and Enforcement Powers of the Secretary of Labor, did away with the PhP 5,000 limitation, allowing the DOLE Secretary to exercise its visitorial and enforcement power for claims beyond PhP 5,000. The only qualification to this expanded power of the DOLE was only that there still be an existing employer-employee relationship.

It is conceded that if there is no employer-employee relationship, whether it has been terminated or it has not existed from the start, the DOLE has no jurisdiction. Under Art. 128(b) of the Labor Code, as amended by RA 7730, the first sentence reads, “Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection.” It is clear and beyond debate that an employer-employee relationship must exist for the exercise of the visitorial and enforcement power of the DOLE. The question now arises, may the DOLE make a determination of whether or not an employer-employee relationship exists, and if so, to what extent?

The first portion of the question must be answered in the affirmative.

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No limitation in the law was placed upon the power of the DOLE to determine the existence of an employer-employee relationship. No procedure was laid down where the DOLE would only make a preliminary finding, that the power was primarily held by the NLRC. The law did not say that the DOLE would first seek the NLRC’s determination of the existence of an employer-employee relationship, or that should the existence of the employer-employee relationship be disputed, the DOLE would refer the matter to the NLRC. The DOLE must have the power to determine whether or not an employer-employee relationship exists, and from there to decide whether or not to issue compliance orders in accordance with Art. 128(b) of the Labor Code, as amended by RA 7730.

The DOLE, in determining the existence of an employer-employee relationship, has a ready set of guidelines to follow, the same guide the courts themselves use. The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employer’s power to control the employee’s conduct. The use of this test is not solely limited to the NLRC. The DOLE Secretary, or his or her representatives, can utilize the same test, even in the course of inspection, making use of the same evidence that would have been presented before the NLRC.

The determination of the existence of an employer-employee relationship by the DOLE must be respected. The expanded visitorial and enforcement power of the DOLE granted by RA 7730 would be rendered nugatory if the alleged employer could, by the simple expedient of disputing the employer-employee relationship, force the referral of the matter to the NLRC. The Court issued the declaration that at least a prima facie showing of the absence of an employer-employee relationship be made to oust the DOLE of jurisdiction. But it is precisely the DOLE that will be faced with that evidence, and it is the DOLE that will weigh it, to see if the same does successfully refute the existence of an employer-employee relationship.

If the DOLE makes a finding that there is an existing employer-employee relationship, it takes cognizance of the matter, to the exclusion of the NLRC. The DOLE would have no jurisdiction only if the

employer-employee relationship has already been terminated, or it appears, upon review, that no employer-employee relationship existed in the first place.”

Clearly then, the Secretary of Labor did not err in making a ruling on the existence of an employer-employee relationship as it has the authority to determine the same pursuant to its visitatorial and enforcement powers.

Anent the question of whether or not the Secretary of Labor was correct in finding that there exists an employer-employee relationship between petitioner and the private respondents, we answer in the affirmative.

It has been consistently held that in determining whether an employer-employee relationship exists between the parties, the following elements must be present: (1) selection and engagement of services; (2) payment of wages; (3) the power to hire and fire; and (4) the power to control not only the end to be achieved, but the means to be used in reaching such an end.[10]

Petitioner never disputed that it hired private respondents. It also appears that private respondents were paid although their wages were below minimum as they were allegedly volunteers only. As nurses and caregivers of the hospital, petitioner has unquestionable control over them and may fire them should their performance be below par. Petitioner argued instead that private respondents are its project employees.

We find petitioner's contention that private respondents are just project employees bereft of merit.

The Supreme Court, in the case of *ABS-CBN BROADCASTING CORPORATION vs. MARLYN NAZARENO, MERLOU GERZON, JENNIFER DEIPARINE and JOSEPHINE LERASAN*,[11] has elucidated that:

“Under existing jurisprudence, project could refer to two distinguishable types of activities. First, a project may refer to a particular job or undertaking that is within the regular or usual business of the employer, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. Second, the term project may also refer to a particular job or undertaking that is not within the regular business of the employer. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times.

The principal test is whether or not the project employees were assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employees were engaged for that project.”

In the instant case petitioner failed to present the contracts of service issued by it to private respondents despite having been given time to submit pertinent documents to the Office of the Regional Director that would have indicated the special project that the private respondents are supposed to be working on. There is also no indication that private respondents' supposed particular project will begin or end on a specific time and that such fact was communicated to them. The contention of petitioner to the effect that the duration of private respondents' voluntary hospital work was until the very moment their application for overseas employment will be approved, is not the specific period required by the rules. More so that the same is not reflected in a written contract.

Instructive is the ruling of the Supreme Court in the case of *HANJIN HEAVY INDUSTRIES AND CONSTRUCTION CO. LTD., HAK KON KIM and/or JHUNIE ADAJAR vs. FELICITO IBAÑEZ, ALIGWAS CAROLINO, ELMER GACULA, ENRIQUE DAGOTDOT AND RUEL CALDA*,[12] to wit:

“While the absence of a written contract does not automatically confer regular status, it has been construed by this Court as a red flag in cases involving the question of whether the workers concerned are regular or project employees. In *Grandspan Development Corporation v. Bernardo and Audion Electric Co., Inc. v. National Labor Relations Commission*,[13] this Court took note of the fact that the employer was unable to present

employment contracts signed by the workers, which stated the duration of the project. In another case, *Raycor v. Aircontrol Systems, Inc. v. National Labor Relations Commission*,^[14] this Court refused to give any weight to the employment contracts offered by the employers as evidence, which contained the signature of the president and general manager, but not the signatures of the employees. In cases where this Court ruled that construction workers repeatedly rehired retained their status as project employees, the employers were able to produce employment contracts clearly stipulating that the workers' employment was coterminous with the project to support their claims that the employees were notified of the scope and duration of the project.^[15]

Hence, even though the absence of a written contract does not by itself grant regular status to respondents, such a contract is evidence that respondents were informed of the duration and scope of their work and their status as project employees. In this case, where no other evidence was offered, the absence of an employment contract puts into serious question whether the employees were properly informed at the onset of their employment status as project employees."

Hence, the Secretary of Labor correctly affirmed the order of the Regional Director requiring petitioner to pay private respondents their salary differentials, 13th month pay, regular holiday and special holiday pay and five days service incentive leave pay. The imputation of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Labor is unfounded.

WHEREFORE, in view of the foregoing, judgment is hereby rendered DISMISSING the petition filed in this case and AFFIRMING the assailed Order dated May 27, 2011 in RO602-200811-CS-012, OS-LS-0012-0423-2010 as well as the Resolution dated October 14, 2011 denying petitioner's motion for reconsideration of the May 27, 2011 Order.

SO ORDERED.

Lagura-Yap, and Quijano-Padilla, JJ., concur.

[1] Rollo at pp. 20-23..

[2] Rollo at pp. 33-34.

[3] Rollo at pp. 52-53.

[4] Rollo at pp. 39-44.

[5] Rollo at pp. 48-51..

[6] Rollo at pp. 52-53.

[7] Rollo at pp. 35-36.

[8] Rollo at pp. 81-90.

[9] G.R. No. 179652 , March 6, 2012.

[10] *Traders Royal Bank vs. National Labor Relations Commission*, 321 SCRA 467

[11] G.R. No. 164156 , September 26, 2006.

[12] G.R. No. 170181, June 26, 2008.

[13] G.R. No. 106648, 17 June 1999, 308 SCRA 341, 350.

[14] G.R. No. 114290, 9 September 1996, 261 SCRA 589, 608.

[15] Cioco, Jr. v. C.E. Construction Corporation, *supra* note 25 at 649; Filipinas Pre-Fabricated Building System (Filsystem), Inc. v. Puente, *supra* note 23 at 828.x

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