

**SPOUSES PAUL CAESAR AND ANNA MARIE TORRENTE MARIQUIT,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
(THIRD DIVISION), NATION MANPOWER CORPORATION, MVPS
MANPOWER SERVICES ...**

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

This is a Petition for Certiorari[1] filed under Rule 65 of the 1997 Rules of Civil Procedure seeking to nullify and set aside the Resolution[2] dated 29 April 2011 of public respondent National Labor Relations Commission (NLRC), Third Division, in NLRC LAC No. 12-001063-10. The assailed Resolution, which was rendered by the public respondent NLRC in the exercise of its appellate jurisdiction, affirmed but modified the Decision[3] dated 1 October 2010 of Labor Arbiter Elias H. Salinas in NLRC NCR OFW Case No. (L)06-08345-10.

FACTS

The records show that in April 2009, petitioner-spouses Paul Caesar and Anna Marie Torrente Mariquit applied for jobs abroad with private respondent Nation Manpower Corporation (NMC). On 22 April 2009, NMC offered petitioner-spouses jobs in Brunei, which the latter accepted.[4]

Under his Contract of Employment,[5] petitioner Paul Caesar Mariquit was hired for the position of Logistic Crew with the company Innerspace. The duration of his employment was for a period of two (2) years commencing on the date he reported for duty, with a monthly salary of B\$380.

On the other hand, the Contract of Employment[6] of petitioner Anna Marie provided that she was hired for the position of Retail Associate with Thann Sanctuary Spa and Beauty Salon. The duration of her employment was also for a period of two (2) years commencing on the date she reported for duty, with a monthly salary of B\$420.

It appears that sometime thereafter, NMC indorsed petitioner-spouses to private respondent MVPS Manpower Services Company (MVPS).[7]

On 27 September 2009, petitioner-spouses left for Brunei and arrived the following day, 28 September 2009.

According to petitioner-spouses, on the date of their arrival, a certain Ms. Amal Lee Abdullah asked them to sign sets of documents, including promissory notes[8] to cover their placement fees equivalent to two (2) months of their respective salaries. This supposedly was not in accordance with their previously agreed placement fee with NMC, equivalent to one (1) month salary of the spouses.

On the same day, they were brought to Innerspace and Thann Sanctuary Spa and Beauty Salon, where Paul Caesar was allegedly assigned as delivery truck driver and not as Logistic Crew. They likewise allege that a week thereafter, or on 3 October 2009, they were asked to go to Riverview Hotel, where they were asked to sign new employment contracts[9] with the latter. But the new contracts, notwithstanding, they allegedly continued to report for work to Innerspace and Thann Sanctuary Spa and Beauty Salon as delivery truck driver and retail

associate.

Thereafter, petitioner Paul Caesar noticed that he was only receiving a monthly salary of B\$300 instead of B\$380. Around that time, petitioner Anna Marie was terminated from employment at Thann Sanctuary Spa and Beauty Salon, and transferred to Jungle Gym as attendant.

These circumstances allegedly prompted the petitioner-spouses to consult the Philippine Embassy in Brunei. They found out that private respondent NMC is not an accredited agent of Innerspace and Thann Sanctuary Spa and Beauty Salon. They likewise learned that there was no job offer from Innerspace and Thann Sanctuary Spa and Beauty Salon authorizing it to hire workers from the Philippines.

On 11 December 2009, petitioner-spouses requested for copies of their contracts from a certain Mr. Javen Ang. The following day, they were reprimanded by Javen Ang for reporting to the Philippine Embassy and, on the same day, were asked to leave the company. Petitioner Paul Caesar asked for payment of their salaries but were not given anything.

Petitioner-spouses went to the Philippine Embassy to take refuge. After two (2) months, Mr. Javen Ang finally gave their unpaid salaries and boat tickets to Malaysia, then plane tickets to the Philippines. Petitioner-spouses were required to sign documents. On 29 January 2010, they arrived back to the Philippines.

Petitioner-spouses filed the instant complaint for illegal dismissal, unpaid wages, overtime pay and damages against NMC, MVPS, Innerspace and Thann Sanctuary Spa and Beauty Salon, Riverview Hotel, NMC President Mary Grace Dass and MVPS President Victor San Luis.

On 1 October 2010, Labor Arbiter Elias H. Salinas rendered a Decision[10] declaring petitioner-spouses to have been illegally dismissed and awarding their money claims in this wise, viz:

“As it is, this office finds that respondents failed to discharge the evidentiary burden that complainants were dismissed for cause and with due process. Such being the case, respondents are hereby adjudged liable for the payment of the unexpired portion of complainants' contracts plus the refund of their placement fees.

Section 10 of R.A. 8042 (Migrant Workers and Overseas Filipinos Act of 1995) in relation to the case of Serrano vs. Gallant Maritime Services Inc., et al. (G.R. No. 167614, March 24, 2009) provides that an illegally dismissed overseas contract worker is entitled to his salaries corresponding to the unexpired portion of the contract and to the refund of placement fee with legal interest (where applicable). The recruitment/manning agency and its foreign employer are held solidarily liable for monetary awards granted pursuant to this provision.

With a contracted salary of B\$380.00 and B\$420.00, complainants are therefore entitled to their salaries for the entire unexpired portion of their contracts or for nineteen months and twenty eight days in the amounts of B\$7,630.20 in the case of complainant Mariquit and B\$8,432.20 on the part of complainant Torrente as well as the refund of their placement fees in the amount of P5,600.00 to each complainant, which the latter claimed to have been paid and as stated in the computation of claims.

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WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Nation Manpower Corporation / MVPS Manpower Services Company, Innerspace / Riverview Hotel and/or Mary Grace Dass and Victor San Luis to jointly and severally pay complainants the peso equivalent at the time of actual payment of the sums of B\$7,630.20 to complainant Paul Cesar (sic) M. Mariquit and the sum of B\$8,432.20 to complainant Anna Marie S. Torrente representing salaries for the entire unexpired portion of their contracts. Respondents are further ordered to pay complainants the sum of P5,600.00 each as refund of placement fees.

All other claims are ordered dismissed for lack of merit.

SO ORDERED.”

Petitioner-spouses, NMC and MVPS filed their respective appeals before the public respondent NLRC. For their part, petitioner-spouses challenged the Labor Arbiter's computation of the unexpired term of their respective contracts, claiming that it should be twenty-one (21) months and nineteen (19) days rather than nineteen (19) months and twenty-eight (28) days as computed in the 1 October 2010 Decision.

On 21 February 2011, public respondent NLRC rendered a Resolution[11] dismissing the parties' appeals for non-perfection. On Motion for Reconsideration of private respondent NMC, public respondent rendered the assailed Resolution[12] reinstating NMC's appeal. In the assailed Resolution, public respondent affirmed the finding of illegal dismissal but modified the Labor Arbiter's award in this wise:

“Complainants also questioned the computation of the unexpired portion of the employment contract. Instead of nineteen (19) months, it should be twenty one (21) months.

We are constrained to modify the amount of judgment award of the Labor Arbiter in view of the re-enactment of R.A. 10022 (An Act Amending R.A. No. 8042 otherwise known as the Migrant Workers Act of 1995) which took effect on March 8, 2010 reiterating Sec. 10 of R.A. 8042 to wit:

'Sec. 7. Sec. 10 of R.A. 8042, as amended is hereby amended to read as follows:

'Sec. 10. Money claims.

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'In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.'

Although the above provision of Section 10, R.A. 8042 was partly declared unconstitutional by the Supreme Court in the case of Antonio Serrano vs. Gallant Maritime Services Inc. and Marlow Navigation Co. Inc. (G.R. No. 167614, March 24, 2009), the aforesaid provision limiting the unexpired term of the complainant to 3 months for every year of the unexpired portion whichever is less has again been incorporated and reiterated in the Amendatory Law R.A. 10022 which took effect on March 8, 2010. Unless and until the said provision is again challenged and declared unconstitutional, We have no other recourse but to follow the latest law enacted by Congress pursuant to their law making powers under the Constitution. Thus, complainants (sic) unexpired term is limited to 3 months per year of their contracts or for a total of 6 months salary for each of the complainants.

Wherefore, respondent's Motion for Reconsideration is GRANTED, however their appeal is DISMISSED for lack of merit. Complainant's appeal is likewise DISMISSED. The Decision of the Labor Arbiter is hereby MODIFIED by ordering respondents Nation Manpower Corporation and MVPS Manpower Services Co. to pay jointly and severally complainants Paul Caesar M. Mariquit and Anna Marie S. Torrente the amounts of B\$2,280.00 and B\$2,520.00 respectively, representing the salaries of the complainants for the unexpired portions of their employment contracts or for three (3) months for every year of the unexpired term, whichever is less. The refund of placement fee in the amount of P5,600.00 each is DELETED.

SO ORDERED.”

Thus, petitioner-spouses filed the instant Petition on the following grounds:[13]

GROUND

I.

THE PUBLIC RESPONDENT NLRC ERRED AND GRAVELY ABUSED ITS DISCRETION IN MODIFYING THE LABOR ARBITER'S DECISION BY GIVING THE COMPLAINANT-PETITIONERS THE MONETARY AWARD EQUIVALENT TO THREE (3) MONTHS OF THEIR MONTHLY SALARY INSTEAD OF TWENTY ONE (21) MONTHS AND NINETEEN (19) DAYS.

II.

THE AMENDMENT UNDER SECTION 7 OF R.A. 10022 RETAINING THE SUBJECT CLAUSE IS UNCONSTITUTIONAL.

THE COURT'S RULING

The Petition is impressed with merit.

The Migrant Workers Act provides that salaries for the unexpired portion of the employment contract or three (3) months for every year of the unexpired term, whichever is less, shall be awarded to the overseas Filipino worker, in cases of illegal dismissal. However, in the Decision dated 24 March 2009 in the case of *Serrano v. Gallant Maritime Services and Marlow Navigation Co., Inc.*, [14] the Supreme Court deciding En Banc, declared unconstitutional the clause "or for three months for every year of the unexpired term, whichever is less" and awarded the entire unexpired portion of the employment contract to the overseas Filipino worker.[15]

On 8 March 2010, however, Section 7 of Republic Act No. 10022 (R.A. No. 10022) amended Section 10 of the Migrant Workers Act, and once again reiterated the provision of awarding the unexpired portion of the employment contract or three (3) months for every year of the unexpired term, whichever is less.[16]

Nevertheless, since the termination of petitioner-spouses occurred on December 2009 before the passage of the amendatory R.A. No. 10022, We shall apply R.A. No. 8042, as unamended, without touching on the constitutionality of Section 7 of R.A. No. 10022.

Laws shall have no retroactive effect, unless the contrary is provided. By its very nature, the amendment introduced by R.A. No. 10022 — restoring a provision of R.A. No. 8042 declared unconstitutional — cannot be given retroactive effect, not only because there is no express declaration of retroactivity in the law, but because retroactive application will result in an impairment of a right that had accrued to the petitioner-spouses by virtue of the *Serrano* ruling — entitlement to their salaries for the unexpired portion of their employment contracts.[17]

All statutes are to be construed as having only a prospective application, unless the purpose and intention of the legislature to give them a retrospective effect are expressly declared or are necessarily implied from the language used. We thus see no reason to nullify the application of the *Serrano* ruling in the present case. Whether or not R.A. No. 10022 is constitutional is not for us to rule upon in the present case as this is an issue that is not squarely before us. In other words, this is an issue that awaits its proper day in court; in the meanwhile, We make no pronouncement on it.[18]

On this score, it behooves Us to note that petitioner-spouses' tenure lasted only for a period of two (2) months and

thirteen (13) days, computed from the date they started reporting for work at Innerspace and Thann Sanctuary Spa and Beauty Salon on 28 September 2009 until their dismissal on 11 December 2011. Considering that the duration of their employment contracts are for a period of two (2) years or twenty-four (24) months, the unexpired portion thereof is twenty-one (21) months and nineteen (19) days, more or less.

Finally, to address the alleged procedural lapse committed by petitioner-spouses for not filing a motion for reconsideration prior to the filing of the instant petition for certiorari, this Court holds that the argument lacks merit.

One of the recognized exceptions to the rule that a motion for reconsideration is a prerequisite to the filing of a petition for certiorari is when the decision is a patent nullity. In this case, considering that the reduction or limitation of the award of salaries to overseas Filipino workers to three (3) months per year of the unexpired portion of their contracts, has been declared unconstitutional pursuant the Serrano doctrine, public respondent's assailed Resolution clearly comes within the purview of the said exception.

WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed Resolution dated 29 April 2011 of the National Labor Relations Commission (NLRC), Third Division, is hereby MODIFIED by ordering private respondents Nation Manpower Corporation / MVPS Manpower Services Company, Innerspace / Riverview Hotel and or Mary Grace Dass and Victor San Luis to jointly and severally pay petitioner-spouses Paul Caesar M. Mariquit and Anna Marie Torrente Mariquit their salaries for the entire unexpired portion of their respective contracts, equivalent to twenty-one (21) months and nineteen (19) days.

SO ORDERED.

Salazar-Fernando (Chairperson) and Bruselas, Jr., JJ., concur.

[1] Rollo, pp. 3-32.

[2] Rollo, pp. 33-39.

[3] Rollo, pp. 40-65.

[4] Rollo, pp. 93 and 96.

[5] Rollo, pp. 94-95.

[6] Rollo, pp. 97-98.

[7] Rollo, page 90.

[8] Rollo, pp. 99 and 101.

[9] Rollo, 100 and 102.

[10] Supra, see footnote 3.

[11] Rollo, pp. 67-70.

[12] Supra, see footnote 2.

[13] Rollo, pp. 21-22.

[14] G.R. No. 167614, 24 March 2009.

[15] Skippers United Pacific, Inc., et al. vs. Nathaniel Doza, et al., G.R. No. 175558, 8 February 2012.

[16] Ibid.

[17] Pert/CPM Manpower Exponent Co., Inc. vs. Armando A. Vinuya, et al., G.R. No. 197528, 5 September 2012.

[18] Ibid.

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