

**PHILIPPINE ASSOCIATION OF SERVICE EXPORTERS, INC.,
PETITIONER, VS. HON. RUBEN D. TORRES, AS SECRETARY OF THE
DEPARTMENT OF LABOR & EMPLOYMENT, AND JOSE N.
SARMIENTO, AS ADMINIST...**

G.R. No. 101279. August 06, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This petition for prohibition with temporary restraining order was filed by the Philippine Association of Service Exporters (PASEI, for short), to prohibit and enjoin the Secretary of the Department of Labor and Employment (DOLE) and the Administrator of the Philippine Overseas Employment Administration (or POEA) from enforcing and implementing DOLE Department Order No. 16, Series of 1991 and POEA Memorandum Circulars Nos. 30 and 37, Series of 1991, temporarily suspending the recruitment by private employment agencies of Filipino domestic helpers for Hong Kong and vesting in the DOLE, through the facilities of the POEA, the task of processing and deploying such workers.

PASEI is the largest national organization of private employment and recruitment agencies duly licensed and authorized by the POEA, to engage in the business of obtaining overseas employment for Filipino landbased workers, including domestic helpers.

On June 1, 1991, as a result of published stories regarding the abuses suffered by Filipino housemaids employed in Hong Kong, DOLE Secretary Ruben D. Torres issued Department Order No. 16, Series of 1991, temporarily suspending the recruitment by private employment agencies of "Filipino domestic helpers going to Hong Kong" (p. 30, Rollo). The DOLE itself, through the POEA took over the business of deploying such Hong Kong-bound workers.

"In view of the need to establish mechanisms that will enhance the protection for Filipino domestic helpers going to Hong Kong, the recruitment of the same by private employment agencies is hereby temporarily suspended effective 1 July 1991. As such, the DOLE through the facilities of the Philippine Overseas Employment Administration shall take over the processing and deployment of household workers bound for Hong Kong, subject to guidelines to be issued for said purpose.

"In support of this policy, all DOLE Regional Directors and the Bureau of Local Employment's regional offices are likewise directed to coordinate with the POEA in maintaining a manpower pool of prospective domestic helpers to Hong Kong on a regional basis.

"For compliance." (Underscoring ours; p. 30, Rollo.)

Pursuant to the above DOLE circular, the POEA issued Memorandum Circular No. 30, Series of 1991, dated July 10, 1991, providing GUIDELINES on the Government processing and deployment of Filipino domestic helpers to Hong Kong and the accreditation of Hong Kong recruitment agencies intending to hire Filipino domestic helpers.

"Subject: Guidelines on the Temporary Government Processing and Deployment of Domestic Helpers to Hong Kong

"Pursuant to Department Order No. 16, series of 1991 and in order to operationalize the temporary government processing and deployment of domestic helpers (DHs) to Hong Kong resulting from the temporary suspension of recruitment by private employment agencies for said skill and host market, the following guidelines and mechanisms shall govern the implementation of said policy:

"I. Creation of a Joint POEA-OWWA Household Workers Placement Unit (HWPU)

"An ad hoc, one stop Household Workers Placement Unit [or HWPU] under the supervision of the POEA shall take charge of the various operations involved in the Hong Kong-DH industry segment:

"The HWPU shall have the following functions in coordination with appropriate units and other entities concerned:

"1. Negotiations with and Accreditation of Hong Kong Recruitment Agencies

"2. Manpower Pooling

"3. Worker Training and Briefing

"4. Processing and Deployment

"5. Welfare Programs

"II. Documentary Requirements and Other Conditions for Accreditation of Hong Kong Recruitment Agencies or Principals

"Recruitment agencies in Hong Kong intending to hire Filipino DHs for their employers may negotiate with the HWPU in Manila directly or through the Philippine Labor Attache's Office in Hong Kong.

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"X. Interim Arrangement

"All contracts stamped in Hong Kong as of June 30 shall continue to be processed by POEA until 31 July 1991 under the name of the Philippine agencies concerned. Thereafter, all contracts shall be processed with the HWPU.

"Recruitment agencies in Hong Kong shall submit to the Philippine Consulate General in Hong Kong a list of their accepted applicants in their pool within the last week of July. The last day of acceptance shall be July 31 which shall then be the basis of HWPU in accepting contracts for processing. After the exhaustion of their respective pools the only source of applicants will be the POEA manpower pool.

"For strict compliance of all concerned." (pp. 31-35, Rollo.)

On August 1, 1991, the POEA Administrator also issued Memorandum Circular No. 37, Series of 1991, on the processing of employment contracts of domestic workers for Hong Kong.

"TO: All Philippine and Hong Kong Agencies engaged in the recruitment of Domestic helpers for Hong Kong

"Further to Memorandum Circular No. 30, series of 1991 pertaining to the government processing and deployment of domestic helpers (DHs) to Hong Kong, processing of employment contracts which have been attested by the Hong Kong Commissioner of Labor up to 30 June 1991 shall be processed by the POEA Employment Contracts Processing Branch up to 15 August 1991 only.

"Effective 16 August 1991, all Hong Kong recruitment agent/s hiring DHs from the Philippines shall recruit

under the new scheme which requires prior accreditation with the POEA.

"Recruitment agencies in Hong Kong may apply for accreditation at the Office of the Labor Attache, Philippine Consulate General where a POEA team is posted until 31 August 1991. Thereafter, those who failed to have themselves accredited in Hong Kong may proceed to the POEA--OWWA Household Workers Placement Unit in Manila for accreditation before their recruitment and processing of DHs shall be allowed.

"Recruitment agencies in Hong Kong who have some accepted applicants in their pool after the cut-off period shall submit this list of workers upon accreditation. Only those DHs in said list will be allowed processing outside of the HWPU manpower pool.

"For strict compliance of all concerned." (Emphasis supplied, p. 36, Rollo.)

On September 2, 1991, the petitioner, PASEI, filed this petition for prohibition to annul the aforementioned DOLE and POEA circulars and to prohibit their implementation for the following reasons:

1. that the respondents acted with grave abuse of discretion and/or in excess of their rule-making authority in issuing said circulars;
2. that the assailed DOLE and POEA circulars are contrary to the Constitution, are unreasonable, unfair and oppressive; and
3. that the requirements of publication and filing with the Office of the National Administrative Register were not complied with.

There is no merit in the first and second grounds of the petition.

Article 36 of the Labor Code grants the Labor Secretary the power to restrict and regulate recruitment and placement activities.

"Art. 36. Regulatory Power. – The Secretary of Labor shall have the power to restrict and regulate the recruitment and placement activities of all agencies within the coverage of this title [Regulation of Recruitment and Placement Activities] and is hereby authorized to issue orders and promulgate rules and regulations to carry out the objectives and implement the provisions of this title." (Underlining ours.)

On the other hand, the scope of the regulatory authority of the POEA, which was created by Executive Order No. 797 on May 1, 1982 to take over the functions of the Overseas Employment Development Board, the National Seamen Board, and the overseas employment functions of the Bureau of Employment Services, is broad and far-ranging for:

1. Among the functions inherited by the POEA from the defunct Bureau of Employment Services was the power and duty:

“2. To establish and maintain a registration and/or licensing system to regulate private sector participation in the recruitment and placement of workers, locally and overseas, x x x.” (Art. 15, Labor Code, underscoring supplied).” (p. 13, Rollo.)

2. It assumed from the defunct Overseas Employment Development Board the power and duty:

“3. To recruit and place workers for overseas employment of Filipino contract workers on a government to government arrangement and in such other sectors as policy may dictate x x x.” (Art. 17, Labor Code.)” (p. 13, Rollo.)

3. From the National Seamen Board, the POEA took over:

"2. To regulate and supervise the activities of agents or representatives of shipping companies in the hiring of seamen for overseas employment; and secure the best possible terms of employment for contract seamen workers and secure compliance therewith." (Art. 20, Labor Code.)

The vesture of quasi-legislative and quasi-judicial powers in administrative bodies is not unconstitutional, unreasonable and oppressive. It has been necessitated by "the growing complexity of the modern society" (*Solid Homes, Inc. vs. Payawal*, 177 SCRA 72, 79). More and more administrative bodies are necessary to help in the regulation of society's ramified activities. "Specialized in the particular field assigned to them, they can deal with the problems thereof with more expertise and dispatch than can be expected from the legislature or the courts of justice" (*Ibid.*).

It is noteworthy that the assailed circulars do not prohibit the petitioner from engaging in the recruitment and deployment of Filipino landbased workers for overseas employment. A careful reading of the challenged administrative issuances discloses that the same fall within the "administrative and policing powers expressly or by necessary implication conferred" upon the respondents (*People vs. Maceren*, 79 SCRA 450). The power to "restrict and regulate conferred by Article 36 of the Labor Code involves a grant of police power (*City of Naga vs. Court of Appeals*, 24 SCRA 898). To "restrict" means "to confine, limit or stop" (p. 62, *Rollo*) and whereas the power to "regulate" means "the power to protect, foster, promote, preserve, and control with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons" (*Philippine Communications Satellite Corporation vs. Alcuaz*, 180 SCRA 218).

The Solicitor General, in his Comment, aptly observed:

"x x x Said Administrative Order [i.e., DOLE Administrative Order No. 16] merely restricted the scope or area of petitioner's business operations by excluding therefrom recruitment and deployment of domestic helpers for Hong Kong till after the establishment of the 'mechanisms' that will enhance the protection of Filipino domestic helpers going to Hong Kong. In fine, other than the recruitment and deployment of Filipino domestic helpers for Hongkong, petitioner may still deploy other class of Filipino workers either for Hongkong and other countries and all other classes of Filipino workers for other countries.

"Said administrative issuances, intended to curtail, if not to end, rampant violations of the rule against excessive collections of placement and documentation fees, travel fees and other charges committed by private employment agencies recruiting and deploying domestic helpers to Hongkong. [They are] are reasonable, valid and justified under the general welfare clause of the Constitution, since the recruitment and deployment business, as it is conducted today, is affected with public interest.

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"The alleged takeover [of the business of recruiting and placing Filipino domestic helpers in Hongkong] is merely a remedial measure, and expires after its purpose shall have been attained. This is evident from the tenor of Administrative Order No. 16 that recruitment of Filipino domestic helpers going to Hongkong by private employment agencies are hereby 'temporarily suspended effective July 1, 1991.'

"The alleged takeover is limited in scope, being confined to recruitment of domestic helpers going to Hongkong only.

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"x x x the justification for the takeover of the processing and deploying of domestic helpers for Hongkong resulting from the restriction of the scope of petitioner's business is confined solely to the unscrupulous practice of private employment agencies victimizing applicants for employment as domestic helpers for Hongkong and not the whole recruitment business in the Philippines." (pp. 62-65, *Rollo*.)

The questioned circulars are therefore a valid exercise of the police power as delegated to the executive branch of Government.

Nevertheless, they are legally invalid, defective and unenforceable for lack of proper publication and filing in the Office of the National Administrative Register as required in Article 2 of the Civil Code, Article 5 of the Labor Code and Sections 3(1) and 4, Chapter 2, Book VII of the Administrative Code of 1987 which provide:

"Art. 2. Laws shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette, unless it is otherwise provided. x x x." (Civil Code.)

"Art. 5. Rules and Regulations. – The Department of Labor and other government agencies charged with the administration and enforcement of this Code or any of its parts shall promulgate the necessary implementing rules and regulations. Such rules and regulations shall become effective fifteen (15) days after announcement of their adoption in newspapers of general circulation." (Emphasis supplied, Labor Code, as amended.)

Section 3. Filing. – (1) Every agency shall file with the University of the Philippines Law Center, three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months shall not thereafter be the basis of any sanction against any party or persons." (Underscoring supplied, Chapter 2, Book VII of the Administrative Code of 1987.)

"Section 4. Effectivity. – In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them." (Emphasis supplied, Chapter 2, Book VII of the Administrative Code of 1987.)

Once more, we advert to our ruling in *Tañada vs. Tuvera*, 146 SCRA 446 that:

"x x x Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation." (p. 447.)

"Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties." (p. 448.)

"We agree that publication must be in full or it is no publication at all since its purpose is to inform the public of the content of the laws." (p. 448.)

For lack of proper publication, the administrative circulars in question may not be enforced and implemented.

WHEREFORE, the writ of prohibition is GRANTED. The implementation of DOLE Department Order No. 16, Series of 1991, and POEA Memorandum Circulars Nos. 30 and 37, Series of 1991, by the public respondents is hereby SUSPENDED pending compliance with the statutory requirements of publication and filing under the aforementioned laws of the land.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

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