

SPOUSES VICENTE AND GLORIA MANALO, PETITIONER, VS. HON. NIEVES ROLDAN-CONFESOR, IN HER CAPACITY AS UNDERSECRETARY OF LABOR AND EMPLOYMENT, JOSE SARMIENTO AS POEA ADMINISTRATOR, ...

G.R. No. 102358. March 30, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

In Our Decision of 19 November 1992, We set aside the Orders of respondent Undersecretary of Labor dated 5 July and 9 October 1991, as well as the Resolution of respondent POEA of 4 February 1991, and reinstated instead its Order of 7 May 1990.

Briefly, the facts in retrospect: Petitioners sued private respondents for illegal exaction, false advertisement and violation of other pertinent labor laws, rules and regulations. In its 7 May 1990 Order, POEA suspended the authority of Career Planners Specialists' International, Inc. (CAREER), for four (4) months for illegal exaction on two counts or, in lieu thereof, a fine of P40,000.00 was imposed, plus restitution of P28,714.00 to petitioner-spouses Vicente and Gloria Manalo, meted on respondent therein Filipino Manpower Services, Inc. (FILMAN), also a fine of P40,000.00 on two counts of misrepresentation, and reiterated its perpetual disqualification from recruitment activities. On 4 February 1991, however, on the basis of the same facts, POEA reversed itself on the penalty imposed on illegal exaction, reasoning that a clear and convincing evidence was necessary to justify the suspension of the authority/license of CPSI. On appeal, Undersecretary Confesor sustained POEA in reversing itself and held that the charge of illegal exaction should be supported by other corroborative circumstantial evidence, and on 9 October 1991 denied the motion for reconsideration of petitioners.

In Our decision, We stressed that only a substantial evidence was required to establish administrative findings of fact. This holds true even if the determination may result in the suspension of authority or license to operate a particular line of business and will not justify requiring a higher degree of proof.

On the dispute regarding the failure of petitioners to state in their testimonies the exact date of payment of the recruitment fee of P40,000.00 and their conflicting versions on how the P30,000.00 cash was presented, even POEA must have considered it trivial as it did not even touch on the issue. For, indeed, what is more important is that peso bills were delivered to and received by respondent-spouses. We further stated that with the payment of a check for P10,000.00, which remains undisputed, the charge of unlawful exaction was clearly established since according to POEA only P3,000.00 was legally chargeable.

On 11 December 1992, private respondents Victor and Elnora Fernandez and CPSI (excluding FILMAN) filed a motion for reconsideration primarily arguing that there was sufficient legal and evidentiary basis for the order of reconsideration issued by POEA as well as the orders of DOLE sustaining the same, and that this Court substituted its own discretion for that of POEA and DOLE.

On 15 December 1992, public respondents also filed their own separate motion for reconsideration arguing that "[t]he POEA and DOLE Orders dated 4 February 1991, 5 July 1991 and 9 October 1991, finding private respondents not guilty of illegal exaction, are themselves supported by substantial evidence, and are therefore not subject to judicial inquiry."

We disagree. According to POEA itself, in its original Order of 7 May 1990 -

"After a careful evaluation of the facts and the evidence presented, We are more inclined to give weight to complainants' (petitioner spouses herein) posture. Complainants' version of the case spontaneously presented in their pleadings specifically during the clarificatory questioning is, to our mind, more convincing than respondent's (sic) stand. Moreover, the manner by which complainants narrated the whole incident inspired belief in the allegation that respondent CAREER is indeed guilty of illegal exaction (underscoring supplied)."

Nothing could be clearer than these categorical statements. We are surprised why, on the basis of the very same findings, public respondent POEA executed a complete turn-about and adopted a different factual conclusion. This is grave abuse of discretion.

Contrary to the present claim of respondents, there is nothing in the assailed orders which states that the version of private respondents has become more believable than that of petitioners. For that reason, the position of POEA expressed in its original Order that the "[c]omplainants' version of the case x x x is, to our mind, more convincing than respondent's (sic) stand," and that "[m]oreover, the manner by which complainants narrated the whole incident inspired belief in the allegation that respondent CAREER is indeed guilty of illegal exaction," remains unreversed, even up to now.

This view finds support in the fact that public respondents reconsidered only the penalty of suspension or P40,000.00 fine to be imposed on CPSI, while the other orders, i.e., restitution of P28,714.00 to complainants and the P40,000.00 fine on FILMAN, remained undisturbed. The assailed orders were virtually saying that while the testimonies of petitioners met the substantial degree of proof requirement (otherwise petitioners could not have been entitled to restitution), the penalty of suspension or P40,000.00 fine could not be imposed on CPSI because the same testimonies did not meet the clear and convincing evidence requirement. In short, there was no change in the findings of fact, but only an escalation of the degree of proof.

The tergiversation of the penalty imposed just because the testimonies were "uncorroborated" was a patent mistake. There is no law, rule or jurisprudence that states that an uncorroborated evidence is ipso facto insufficient and the penalty of suspension or P40,000.00 fine may not be imposed for illegal exaction, even if the charge was substantially proved and restitution of the money exacted was ordered. Even in criminal cases (*People v. Mision*, G.R. No. 63480, 26 February 1991, 194 SCRA 432; *People v. Catubig*, G.R. No. 71626, 22 March 1991, 195 SCRA 505; *People v. Base*, G.R. No. 92124, 6 May 1991, 196 SCRA 688; *People v. Santiago*, G.R. No. 46132, 28 May 1991, 197 SCRA 556; *People v. Aquino*, G.R. No. 83214, 28 May 1991, 197 SCRA 578; *People v. Lazo*, G.R. No. 75367, 19 June 1991, 198 SCRA 274; *People v. Sampaga*, G.R. No. 91539, 30 September 1991, 202 SCRA 157; *People v. Babac*, G.R. No. 97932, 23 December 1991, 204 SCRA 968), which require proof beyond reasonable doubt, a credible, convincing and positive testimony of a lone witness is sufficient to sustain conviction. The original Order regarded and characterized the subject testimonies as "convincing" and "inspired belief".

The subsequent categorization of petitioners' testimonies as "[m]ere allegation of complainant" (p. 2, POEA Resolution of 4 February 1991; see also p. 2, respondent Undersecretary's Order of 5 July 1991) is startling, coming as it does from the same body which found CPSI guilty of illegal exaction "[a]fter a careful evaluation of the facts and the evidence presented." The same may also be said of a later pronouncement that there was "no

concrete evidence or proof to support the POEA Administrator's initial findings" (p. 2, respondent Undersecretary's Order of 5 July 1991; see also p. 2, POEA Resolution of 4 February 1991).

As regards the failure of petitioners to state the exact date when the payment was made and their different versions on how the money was bundled together, public respondents may not now complain that these circumstances remain unexplained. It should be noted that petitioners were questioned separately and they were not told of the discrepancies in each other's testimony. We consider it unjust for public respondents to expect petitioners to explain inconsistencies which were not brought to their attention, or of which they were given no chance to explain, and then discredit their testimonies on the basis of said inconsistencies.

Public respondents may be correct in saying that where two conflicting versions are supported by substantial evidence, the administrative body may choose which to uphold and for that reason even flip-flop on its factual findings without thereby incurring grave abuse of discretion. In this case however, public respondents reversed the penalty, not on the basis that one version is more believable than the other, but that the testimonies of complainants, after describing them to be "more convincing than respondent's stand" and which "inspired belief," were not clear and convincing. Thus, to that extent, public respondents committed grave abuse of discretion correctable by certiorari.

Admittedly, an appellate court may not reverse an award for civil liability because an obligation was not established beyond reasonable doubt for, in civil cases, only a preponderance of evidence is required. Likewise, an administrative body may not require a degree of proof higher than the substantial evidence contemplated in Sec. 5, Rule 133, of the Rules of Court, and the rules of administrative due process enunciated in *Ang Tibay v. The Court of Industrial Relations* (69 Phil. 635, G.R. No. 46496, 27 February 1940), otherwise, what would prevent an agency from demanding proof beyond reasonable doubt or require at least two or more witnesses to support an administrative finding of fact. Then, an agency may even create its own degree of proof - like requiring five witnesses, or an evidence be totally uncontested, to prove a claim - all in the spirit of the relative independence of administrative bodies from technical rules.

The Court is charged with having unjustifiably invaded the turf of public respondents. We need only stress that the judicial power vested in the Supreme Court and all lower courts necessarily includes the authority to "determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government" (Art. VIII, Sec. 1, Constitution). Clearly then, even presidential prerogatives are not beyond judicial review when, as in this case before Us, there is grave abuse of discretion or an utter disregard of the law.

In *Atlas Consolidated Mining and Development Corp. v. Factoran, Jr.* (G.R. No. 75501, 15 September 1987, 154 SCRA 49, 57), We reiterated the rule that judicial review of administrative findings of fact may be made -

"x x x when there has been a denial of due process, or mistake of law or fraud, collusion or arbitrary action in the administrative proceeding (*L-21588 - Atlas Development and Acceptance Corp. v. Gozon, etc. et al.*, 64 O.G. 11511 [sic] [1967]), where the procedure which led to factual findings is irregular; when palpable errors are committed; or when a grave abuse of discretion, arbitrariness, or capriciousness is manifest (*Ateneo de Manila University v. CA*, 145 SCRA 100-101 [1986]; *International Hardwood and Veneer Co., of the Philippines v. Leogardo*, 117 SCRA 967; *Baguio Country Club Corporation v. National Labor Relations Commission*, 118 SCRA 557; *Sichangco v. Commissioner of Immigration*, 94 SCRA 61; and *Eusebio v. Sociedad Agricola de Balarin*, 16 SCRA 569)."

Respondents assert that FILMAN, as the deploying agency of petitioners, was legally entitled to charge P10,000 for both petitioners, hence, its acceptance of a check for the same amount was not an overcharge. Here, public respondents appear confused. Their orders and resolutions prove otherwise.

It is undisputed that the Fernandez spouses demanded and received the check for P10,000.00, but the subject orders and resolutions of public respondents did not particularly indicate whether the check was received by the Fernandezes in their capacity as officers of CPSI or of FILMAN. Nevertheless, since the check was delivered to the Fernandezes in the office of CPSI and in the absence of proof that at that time the latter represented themselves as officers of FILMAN, there is no conclusion other than that the Fernandezes indeed acted as officers of CPSI. Moreover, the same amount represented by the check was the object of CPSI's prayer for recovery of placement fees in its answer with counterclaim and position paper filed before respondent POEA (Annexes "C" and "D", Petition; Rollo, pp. 75-79 and 115-117). If, as alleged, the Fernandezes did receive the check as officers of FILMAN, then CPSI and the Fernandez couple (and the other respondents as well) have to do a lot of explaining as to why CPSI prayed for an award of placement fees.

Significantly, the original order of POEA deducting from the amount to be reimbursed the sum of P3,000.00 as appropriate placement fees of both petitioners is a clear manifestation that a private recruitment entity (CPSI) and not a private employment agency (FILMAN) was entitled to those fees.

As regards the remaining issue on procedure, the same is deemed waived as it is brought to Us only for the first time in this motion for reconsideration.

WHEREFORE, finding no substantial argument to warrant modification of Our Decision of 19 November 1992, much less a reversal, and for lack of merit, We Resolve to DENY WITH FINALITY the motions for reconsideration respectively filed by public and private respondents.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

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