

INTERNATIONAL PHARMACEUTICALS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), FOURTH DIVISION, AND DR. VIRGINIA CAMACHO QUINTIA, RESPONDENTS.*G.R. No. 106331. March 09, 1998*

Ponente: MENDOZA, J.

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This is a petition for certiorari to set aside the decision of the National Labor Relations Commission which affirmed in toto the decision of the Labor Arbiter, finding petitioner guilty of the illegal dismissal of private respondent Virginia Camacho Quintia, as well as its resolution denying reconsideration.

Petitioner International Pharmaceuticals, Inc. (IPI) is a corporation engaged in the manufacture, production and sale of pharmaceutical products. In March 1983, it employed private respondent Virginia Camacho Quintia as Medical Director of its Research and Development department, replacing one Diana Villaraza.[1] The government, in that year, launched a program encouraging the development of herbal medicine and offering incentives to interested parties. Petitioner decided to venture into the development of herbal medicine, although it is now alleged that this was merely experimental, to find out if it would be feasible to include herbal medicine in its business.[2] One of the government requirements was the hiring of a pharmacologist. Petitioner avers that it was only for this purpose that private respondent was hired, hence its contention that private respondent was a project employee.

The contract of employment provided for a term of one year from the date of its execution on March 19, 1983, subject to renewal by mutual consent of the parties at least thirty days before its expiration. It provided for a monthly compensation of P4,000.00. It was agreed that Quintia could continue teaching at the Cebu Doctor's Hospital,[3] where she was, at that time, a full-time member of the faculty.

Quintia claimed that when her contract of employment was about to expire, she was invited by Xavier University in Cagayan de Oro City to be the chairperson of its pharmacology department. However, Pio Castillo, the president and general manager, prevailed upon her to stay, assuring her of security of tenure. Because of this assurance, she declined the offer of Xavier University.[4] Indeed, after her contract expired on March 19, 1984, she remained in the employ of petitioner where she not only performed the work of Medical Director of its Research and Development department but also that of company physician. This continued until her termination on July 12, 1986.

In her complaint, private respondent alleges that the reason for her termination “was her taking up the cudgels for the rank and file employees when she felt they were given a raw deal by the officers of their own Savings and Loan Association.” She claimed that sometime in June 1986, while Pio Castillo was in China, the Association declared dividends to its members. Due to complaints of the employees, meetings were held during which private respondent pointed out the “inequality in the imposition of interest rate to the low-salaried employees” and led them in the demand for a full disclosure of the association’s financial status. Her participation was resented by the

association's officers, all of whom were appointed by management, so that when Castillo arrived, private respondent was summoned to Castillo's office where she was berated for her acts and humiliated in front of some laborers. When she sought permission to explain her side, she was arrogantly turned down and told to leave.[5]

On July 10, 1986, Quintia was replaced as head of the Research and Development department by Paz Wong. Two days later, on July 12, 1986, she received an inter-office memorandum officially terminating her services allegedly because of the expiration of her contract of employment.

On January 21, 1987,[6] private respondent filed a complaint, charging petitioner with illegal dismissal and praying that petitioner be ordered to reinstate private respondent and to pay her full backwages and moral damages.[7]

In its position paper, petitioner claimed that private respondent had been hired on a "consultancy basis coterminous with the duration of the project" involving the development of herbal medicine and that her employment was terminated upon the abandonment of that project. It explained that Quintia's employment, which lasted for more than two years after the original contract expired, was by virtue of an oral agreement with the same terms as the written contract or, at the very least, by virtue of implied extensions of the said contract which lasted until the "company decided that nothing would come out from said project." [8]

In a decision rendered on December 18, 1990, the Labor Arbiter found private respondent to have been illegally dismissed. He held that private respondent was a regular employee and not a project employee and so could not be dismissed without just and/or legal causes as provided in the Labor Code. Moreover, he found that petitioner failed to observe due process in terminating Quintia's services. For this reason, the Labor Arbiter ordered the petitioner to reinstate private respondent and to pay her backwages for three years, including 13th month pay and Service Incentive Leave, moral damages and attorney's fees amounting to P177,099.94. He further ruled that if reinstatement was no longer feasible, petitioner should pay private respondent P6,000 as separation pay.

On appeal, the NLRC affirmed the ruling in a decision dated May 26, 1992. Petitioner moved for reconsideration, but its motion was denied for lack of merit. The NLRC directed the Labor Arbiter to conduct a hearing to determine whether reinstatement was feasible. Hence, this petition.

We find the petition to be without merit.

First. Art. 280 of the Labor Code provides:

Art. 280. Regular and casual employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be 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.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

In *Brent School, Inc. v. Zamora*, [9] it was held that although work done under a contract is necessary and desirable in relation to the usual business of the employer, a contract for a fixed period may nonetheless be made so long as it is entered into freely, voluntarily and knowingly by the parties. Applying this ruling to the case at

bar, the NLRC held that the written contract between petitioner and private respondent was valid, but, after its expiration on March 18, 1984, as the petitioner had decided to continue her services, it must respect the security of tenure of the employee in accordance with Art. 280. It said:

To our mind, when complainant was allowed to continue working without the benefit of a contract after the expiration of the one year period provided in their written contract, that act completely changed the complexion of the relationship between the parties.

The NLRC cited the following facts to justify its ruling: Quintia was continued as Medical Director and even given the additional function of company physician after the expiration of the original contract; she undertook various civic activities for and in behalf of petitioner, such as conducting free clinics and giving out IPI products; she did work which was necessary and desirable in relation to the trade or business of petitioner; and her employment lasted for more than (3) three years.

Petitioner contends:

- (1) that the NLRC's reliance on Art. 280 is "clearly contrary to this Court's decisions;"
- (2) that private respondent's tasks are really not necessary and desirable to the usual business of petitioner;
- (3) that there is "clearly no legal or factual basis to support respondent NLRC's reliance on the absence of a new written contract as indicating that respondent Quintia became a regular employee." [10]

Petitioner's first ground is that the ruling of the NLRC is contrary to the Brent School decision. He contends that Art. 280 should not be so interpreted as to render employment contracts with a fixed term invalid. But the NLRC precisely upheld the validity of the contract in accordance with the Brent School case. Indeed, the validity of the written contract is not in issue in this case. What is in issue is whether private respondent did not become a regular employee after the expiration of the written contract on March 18, 1984 on the basis of the facts pointed out by the NLRC, simply because there was in the beginning a contract of employment with a fixed term.

Petitioner also invokes the ruling in *Singer Sewing Machine v. Drilon* [11] in which it was stated:

The definition that regular employees are those who perform activities which are desirable and necessary for the business of the employer is not determinative in this case. Any agreement may provide that one party shall render services for and in behalf of another for a consideration (no matter how necessary for the latter's business) even without being hired as an employee. This is precisely true in the case of an independent contractorship as well as in an agency agreement. The Court agrees with the petitioner's argument that Article 280 is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, i.e., regular employees and casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a union, or to security of tenure. Article 280 does not apply where the existence of an employment relationship is in dispute.

Petitioner argues:

Even assuming arguendo that respondent Quintia was performing tasks which were 'necessary and desirable to the main business' of petitioner, said standard cannot apply since said Article merely distinguishes between regular and casual employment for the purpose of determining entitlement to benefits under the Labor Code. In this case, respondent Quintia's alleged status as "regular" employee has precisely been disputed by petitioner. And, as this Honorable Court noted in the foregoing case, an agreement may provide that one party will render services, no matter how necessary for the other party's business, without being hired as a regular employee, and this is precisely the nature of the contract entered into by the parties in this case. [12]

Clearly, petitioner misapplies the ruling in *Singer*. Quintia's status as an employee is not disputed in this case.

Therefore, in determining whether she was a project employee or a regular employee, the question is whether her work was “necessary and desirable to the main business of the employer.” It is true that, as held in *Singer*, parties can enter into an agreement for the rendering of services by one to the other and that however necessary such services may be to the latter’s business the contract will not necessarily give rise to an employer-employee relationship if the elements of such relationship are not present. But that is not the question in this case. Quintia was an employee. The question is whether, given the fact that she was an employee, she was a regular or a project employee, considering that she had been continued in the service of petitioner for more than two years following the expiration of her written contract.

Petitioner’s second point is that private respondent’s tasks were not really necessary and desirable in respect of the usual business of petitioner, the work done by Quintia being on a temporary basis only.[13] According to petitioner, Quintia’s engagement was only for the duration of its herbal medicine development project. In addition, petitioner points out that private respondent was not required to keep fixed office hours and this arrangement continued even after the expiration of the written contract, thus indicating the temporary nature of her employment.

Petitioner’s allegations are contrary to the factual findings of both the NLRC and the Labor Arbiter, particularly their findings that she was the head of petitioner’s Research and Development department; that in addition, she performed the function of company physician; and that she undertook various civic activities in behalf of petitioner and that this engagement lasted for more than three years (1983 - 1986).[14] Certainly, as the NLRC observed, these facts show complainant working “not as ‘consultant’ but as a regular employee albeit a managerial one.”[15] It should be added that Quintia was hired to replace one Diana Villaraza,[16] which suggests that the position to which she was appointed by petitioner was an existing one, so much so that after the termination of Quintia’s employment, somebody else (Paz Wong) was appointed in her place.[17] If private respondent’s employment was for a particular project which had allegedly been terminated, why would there be a need to replace her?

We are not prepared to throw overboard the findings of both the NLRC and the Labor Arbiter on the matter. These are essentially factual matters which are within the competence of the labor agencies to determine. Their findings are accorded by this Court respect and finality if, as in this case, they are supported by substantial evidence.[18]

Indeed, the terms of the written employment contract are clear:

. . . That the FIRST PARTY is a manufacturer of medicines and pharmaceutical preparations, while the SECOND PARTY is a Doctor of Medicine and Pharmacologist of long standing;

That the FIRST PARTY desires to hire the SECOND PARTY as Medical Director of its Research and Development department, which the latter accepts, under the following terms and conditions, to wit:

1. That the SECOND PARTY shall perform and/or cause the performance of the following:

- a) Microbiological research and testing;
- b) Clinical research and testing;
- c) Prove and support First Party’s claims in its brochures, literature and advertisements;
- d) Register with and cause the approval by Food and Drug Administration of all pharmaceutical and medical preparations developed and tested by the First Party’s R&D department; and
- e) To do and perform such other duties as may, from time to time, be assigned by the First Party consonant to and

in accord with the position herein conferred. . . .

There is no mention whatsoever of any project or of any consultancy in the contract. As aptly observed by the Solicitor General, the duties of Quintia as provided for in the contract reject any notion of consultancy. Clearly, she was hired as Medical Director of the Research and Development department of petitioner company and not as consultant nor for any particular project. The work she performed was manifestly necessary and desirable to the usual business of petitioner, considering that it is engaged in the manufacture and production of medicinal preparations. Petitioner itself admits that research and development are part of its business.[19]

We agree with the Labor Arbiter that the fact that she was not required to report at a fixed hour or to keep fixed hours of work does not detract from her status as a regular employee. As petitioner itself admits, Quintia was a managerial employee[20] and therefore not covered by the Labor Code provisions on hours of work. What this Court said in once case [21] is apropos:

The primary standard, . . . of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.

Neither does the fact that private respondent was teaching full-time at the Cebu Doctors' College negate her regular status since this fact does not affect the nature of Quintia's work. Whether one's employment is regular is not determined by the number of hours one works, but by the nature of the work and by the length of time one has been in that particular job.

Considering the foregoing, it is clear that Quintia became a regular employee of petitioner after her contract expired on March 18, 1984 and her services were continued for more than two years in the usual trade or business of the employer.

Petitioner goes on to state his third point that "there is clearly no legal or factual basis to support respondent NLRC's reliance on the absence of a new written contract as indicating that respondent Quintia became a regular employee." [22] In support, the petitioner again cites the Brent School case [23] where it was recognized that term contracts can be made orally. [24] Hence, it is argued that "the mere fact that there was no subsequent written contract does not mean that the original agreement was abandoned and/or that respondent became a regular employee due to the absence thereof and/or that the parties had executed a new agreement, in the absence of evidence showing intent to abandon and/or novate the same." It posits that, based on the acts of the parties, an implied renewal was entered into, or, at the very least, petitioner claims, the absence of a written contract only indicates that the parties impliedly agreed to extend their written contract.

There is absolutely no principle of law to support the proposition urged by petitioner. On the other hand the written contract in this case provided that it was subject to renewal by mutual consent of the parties at least thirty days before its expiration on March 18, 1984. There is no evidence to show that the parties mutually agreed to renew their contract. On the other hand, to sustain petitioner's contention that there was an implied extension after the expiration of the original contract would make it possible for employers like petitioner to circumvent Art. 280 of the Labor Code and thus prevent an employee from becoming regular through the simple expedient of making him sign a contract for a term and then extend to him a contract term, after term, after term.

Moreover, assuming that petitioner is correct that there was at least an implied renewal of the written contract containing the same terms and conditions, then Quintia's termination should have been effective in March of 1986 or March of 1987 rather than July of 1986. It should be noted that the fixed term stated in the written contract allegedly renewed is one year. Considering that the said contract was executed on March 19, 1983, then if there really were implied renewals with the same terms and conditions, private respondent's employment should not have been terminated in July of 1986. As discussed earlier, the decision of the NLRC is based not alone on inference drawn from the expiration of the contract but on facts which, in light of Art. 280, show that private respondent's work was in pursuance of the business of petitioner.

Second. Prescinding from the premise that private respondent was a project employee, petitioner claims that because it had discontinued its herbal medicine project after it had been shown not to be viable, private respondent's employment had to be terminated, too.

We have already shown why this claim has no basis and no merit. Petitioner was unable to prove that it had actually undertaken a project. Private respondent's contract will be searched in vain for any mention of a project. What it states is that Quintia's employment was one for a definite period, not for a project as petitioner would have it. A project employment is one where the employment has been fixed for a specific project/undertaking, the completion or termination of which has been determined at the time of the engagement of the employee.[25] Quintia's engagement after the expiration of the written contract cannot be said to have been pre-determined because, if petitioner's other claim is to be believed, it was essentially contingent upon the feasibility of herbal medicine as part of petitioner's business and for as long as the herbal medicine development was being pursued by it.

It follows from the conclusion that private respondent Quintia was a regular employee that she could only be dismissed for just or authorized cause.[26] The records are bereft of any evidence showing the existence of any of the specified causes in the Labor Code. It may be that an employer is allowed wider discretion in terminating employment in respect of managerial personnel compared to rank-and-file employees, and that such managerial employees can be separated from the service for loss of confidence.[27] However, a mere allegation of such ground is not sufficient. As this Court has held in *Western Shipping Agency, Inc. v. NLRC*: [28]

Loss of confidence is a valid ground for the dismissal of managerial employees . . . But even managerial employees enjoy security of tenure, . . . and, . . . can only be dismissed after cause is shown in an appropriate proceeding. The loss of confidence must be substantiated by evidence. The burden of proof is on the employer to show grounds justifying the loss of confidence.

Petitioner in this case failed to discharge this burden, as both the Labor Arbiter and the NLRC found.

Moreover, as the labor arbiter found, petitioner failed to accord due process to private respondent in terminating her services. In the case of *Aurora Land Projects Corp. v. NLRC* it was stated: [29]

The law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employee can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him (Section 13, BP 130; Sections 2-6, Rule XIV, Book V Rules and Regulations Implementing the Labor Code as amended). Failure to comply with the requirements taints the dismissal with illegality. This procedure is mandatory; in the absence of which, any judgment reached by management is void and nonexistent. (*Tingson, Jr. v. NLRC*, 185 SCRA 498 [1990]; *National Service Corporation v. NLRC*, 168 SCRA 122 [1988]; *Ruffy v. NLRC*, 182 SCRA 365 [1990].

The memoranda dated July 12, 1986 and July 10, 1986, copies of which were furnished the complainant,

informing her of the termination of her contract and the appointment of a replacement, without apprising her of the particular acts or omissions for which her dismissal was sought, do not suffice to satisfy the requirements of notice. Nor was petitioner given the opportunity to be heard.[30] Consequently, her dismissal from the service was illegal.

Third. Petitioner contends that the reinstatement of private respondent is not feasible because the position which she held was abolished on account of its decision to discontinue its herbal medicine development project and that, in any event, because the position is a sensitive one which needs an employee in whom the petitioner has full faith and confidence. It is also contended that reinstatement would be untenable considering the antagonism engendered as a result of this case.[31]

As regards the claim that the position has already been abolished and, therefore, reinstatement is impossible, suffice it to state that the factual findings of the Labor Arbiter belie this. A replacement for private respondent was appointed two (2) days prior to her termination. If the position had been abolished, there would have been no necessity for a replacement.

But we agree that because of antagonism generated by this case and the private respondent's own preference for separation pay, reinstatement would no longer be feasible. It would thus be in the best interest of the parties to order the payment of separation pay in lieu of reinstatement. Such an amount should not be equivalent to one-half month salary for every year of service only, as ordered by the Labor Arbiter and affirmed by the NLRC but, in accordance with our decisions,[32] it must be equivalent to one month salary for every year of service.

Private respondent should be given separation pay and backwages in accordance with the Labor Code. The backwages, however, are to be computed only for three years from July 12, 1986, the date of her dismissal, without deduction or qualification, considering that the dismissal was made before the effectivity on March 21, 1989, of R.A. No. 6715, which provides for the payment of full backwages to employees who are illegally dismissed.[33]

WHEREFORE, the petition is DISMISSED. The decision of the National Labor Relations Commission is MODIFIED by ordering petitioner to pay private respondent separation pay equivalent to one month salary for every year of service. In all other respects, the decision of the NLRC is AFFIRMED.

SO ORDERED.

Regalado (Chairman), Melo, Puno and Martinez, JJ., concur.

[1] Petition, Annex E, p. 2.

[2] Id., p. 3.

[3] Id., Annex C, p. 1.

[4] Id., Annex F, pp. 2-3.

[5] Id., pp. 3-4.

[6] Should be August 22, 1986 as per complaint form.

[7] Petition, Annex F, p. 1.

[8] Id., Annex E, pp. 2-3.

[9] 181 SCRA 702 (1990).

[10] Petition, pp. 9-14.

[11] 193 SCRA 270 (1991).

[12] Petition, p. 12 (emphasis added).

[13] Id., Annex G, p. 6.

[14] Id., Annex A, p. 4.

[15] Ibid.

[16] Id., Annex E, p. 2.

[17] Id., Annex A, p. 2.

[18] Chua v. National Labor Relations Commission, 267 SCRA 196 (1997).

[19] Petition, p. 13.

[20] Id., Annex G, p. 7.

[21] De Leon v. National Labor Relations Commission, 176 SCRA 615, 621 (1989). Accord, Capitol Industrial Construction Groups v. National Labor Relations Commission, 221 SCRA 469 (1993).

[22] Petition, Annex A, p. 14.

[23] Supra note 9.

[24] Supra note 9 at p. 716.

[25] Labor Code, Art 280; Rules to Implement the Labor Code, Book VI , Rule I, §5(a).

[26] Constitution, Art. XIII, §3; Labor Code, Art. 279.

[27] Coca-Cola Bottlers Phils, Inc. v. National Labor Relations Commission, 172 SCRA 751 (1989); Metro Drug Corp. v. National Labor Relations Commission, 143 SCRA 132 (1986).²⁷

[28] 253 SCRA 405 (1996).

[29] 266 SCRA 48 (1997).

[30] Petition, Annex F, pp. 4 and 10.

[31] Petition, pp. 17-18.

[32] Liana's Supermarket v. National Labor Relations Commission, 257 SCRA 186, 198-199 (1996).

[33] Mendoza v. National Labor Relations Commission, G.R. No. 122481, March 5, 1998; Magcalas v. National Labor Relations Commission, 269 SCRA 453 (1997).

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