A' PRIME SECURITY SERVICES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), HON. ARBITER VALENTIN GUANIO, AND OTHELLO MORENO, RESPONDENTS.

G.R. No. 107320. January 19, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

This special civil action for certiorari seeks to annul the decision[1] of the Second Division of the National Labor Relations Commission ("NLRC"), dated April 20, 1992, which affirmed with modification the decision of Labor Arbiter Valentin C. Guanio in NLRC-NCR Case No. 00-02-01038-89.

The facts that matter are as follows:

On February 23, 1989, private respondent Othello C. Moreno filed a complaint with the Department of Labor and Employment, Arbitration Branch, National Capital Region, against the petitioner, A' Prime Security Agency, Inc., for illegal dismissal, illegal deduction and underpayment of wages. Docketed as NLRC-NCR Case No. 00-02-01038-89, the complaint was assigned to Labor Arbiter Valentin C. Guanio ("LA Guanio").

The complaint alleged, among others, that complainant (private respondent herein) had been working as a security guard for a year with the Sugarland Security Services, Inc., a sister company of petitioner; that he was rehired as a security guard on January 30, 1988 by the petitioner and assigned to the same post at the U.S. Embassy Building along Roxas Boulevard, Manila; that he was among those absorbed by the petitioner when it took over the security contracts of its sister company, Sugarland Security Services, Inc., with the U.S. Embassy; that he was forced by petitioner to sign new probationary contracts of employment for six (6) months; that on August 1, 1988, his employment was terminated; that during his employment, the amount of P20.00 per month was deducted from his salary allegedly for withholding tax, although no withholding tax receipt was given to him, and the salary he was receiving was only P2,187.00 a month, which was way below the P2,410.17 stipulated in the PADPAO memorandum of agreement.

Petitioner, for its part, alleged that the private respondent was hired on January 30, 1988, on a probationary basis, and he signed an authority to deduct from his salary any reimbursement for any loss or damage caused to properties of the client; that he was given a copy of petitioner's rules and regulations which provide that sleeping on post is punishable by warning, suspension and dismissal and he was caught sleeping on post on March 17, 1988, for which he was sent a memorandum giving him a last warning; that on March 25, 1988, he figured in a quarrel with another security guard, which resulted in a near shootout; that at the end of his probationary employment, he was given a psychological test and on the basis of the foregoing, petitioner told him that his probationary employment had come to an end as he did not pass the company standard and therefore, he could not be hired as a regular employee.

On November 28, 1989, LA Guanio handed down the decision[2] disposing as follows:

> "WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the respondent to reinstate the complainant to his former position and accord to him the status of a regular employee. The respondent is further ordered to pay the complainant his backwages from the time he was unlawfully dismissed until he is finally reinstated; and to refund to the complainant the deduction it had made from his salary in the amount of P20.00 per month.
>
> The claim of the complainant for underpayment of wages is dismissed for lack of merit.
>
> SO ORDERED."

Petitioner appealed to the National Labor Relations Commission which affirmed the decision of LA Guanio with a slight modification, holding thus:

> "WHEREFORE, premises considered, the appealed decision is hereby, Modified as aforediscussed. The order for the refund of the deductions made by respondent from complainant's salaries in the amount of P20.00 per month is hereby, Vacated and Set Aside.
>
> Moreover, the backwages due complainant should in no case exceed the period of three (3) years.
>
> In all other respects, the decision appealed from, stands."[3]

Petitioner presented a motion for reconsideration[4]of the aforesaid decision but to no avail. The same was denied by the respondent NLRC for lack of merit.[5]

Undaunted, petitioner found its way to this Court via the present petition, contending that:

> "I
>
> BASIC PUBLIC RESPONDENTS HAVE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR IN EXCESS OF JURISDICTION WHEN THEY UNDULY PRONOUNCED PRIVATE RESPONDENT'S EMPLOYMENT WITH THE PETITIONER AS A CONTINUANCE OF ITS (sic) PREVIOUS EMPLOYMENT WITH ITS (sic) OLD EMPLOYER, THE SUGARLAND SECURITY SERVICES, INC., WITHOUT ANY SHRED OF EVIDENCE LINKING THE TWO COMPANIES, EMPLOYERS WHICH ARE DISTINCT AND DIFFERENT PERSONALITIES, AS PROVEN BY THE RECORDS OF THE CASE, RESULTING IN SERIOUS PREJUDICE OF THE PETITIONER WHICH, LIKE LABOR, ALSO DESERVES PROTECTION OF THE LAW.
>
> II
>
> BOTH PUBLIC RESPONDENT (sic) HAVE COMMITTED GRAVE ABUSE OF DISCRETION WHEN THEY CHARGED AND FOUND PETITIONER GUILTY OF ILLEGAL DISMISSAL AND THUS FAILED TO CONSIDER THAT THE TERMINATION OF THE PROBATIONARY CONTRACT BY THE PETITIONER IS A LEGITIMATE EXERCISE OF DISCRETION IN ANTICIPATION OF WHAT IT PERCEIVED OF AN EMPLOYEE, IN THE PERSON OF THE PRIVATE RESPONDENT, WHICH (sic) WILL NOT MAKE A GOOD - (sic) ASSET OF THE COMPANY AND INSTEAD IS A LIABILITY AS IT POSSES (sic) DANGERS NOT ONLY ON THE PETITIONER BUT ON ITS VERY CLIENT, THE U.S. EMBASSY, WITH WHOM PRIVATE RESPONDENT IS DIRECTLY SERVING WITH (sic), DUE TO ITS (sic) INEFFICIENCY, ENEPTNESS (sic) AND MORE THAN (sic) BELOW BAR PERFORMANCE BY (sic) THE PRIVATE RESPONDENT DURING ITS (sic) SIX MONTH PROBATIONARY PERIOD;
>
> III
>
> THE PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION WHEN THEY

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ORDERED PETITIONER FOR THE PAYMENT OF (sic) PRIVATE RESPONDENT'S BACK WAGES (sic) AND FOR ITS (sic) REINSTATEMENT."

For resolution can be simplified into the following issues, to wit:

- Whether private respondent's employment with A' Prime Security Services, Inc. was just a continuation of his employment with Sugarland Security Services, Inc.;

- Whether private respondent is a regular or probationary employee of petitioner; and

- Whether private respondent's dismissal is illegal.

After a careful study, the Court finds the imputation of grave abuse of discretion on the part of the respondents, NLRC and "LA Guanio", barren of any sustainable basis.

Anent the first issue, records show that the allegations of the private respondent that Sugarland Security Services, Inc. ("Sugarland") is a sister company of A' Prime Security Services, Inc. ("A' Prime") and that the latter absorbed the security contracts and security guards of Sugarland with the U.S. Embassy were neither denied nor controverted by the petitioner before the Labor Arbiter. Under Section 1, Rule 9 of the Rules of Court,[6] in relation to Section 3, Rule I of the Rules of the NLRC,[7] material averments in the Complaint are deemed admitted when not specifically denied.

In the petition under scrutiny, it is contended belatedly that A' Prime and Sugarland are two separate and distinct juridical entities. However, aside from such a bare allegation, petitioner presented no supporting evidence and the Court cannot, of course, act thereupon without any legal basis.

The Court cannot uphold and give weight to private respondent's resignation letter (Annex "D"[8]) which appears to have been written and submitted at the instance of petitioner. Its form is of the company's and its wordings are more of a waiver and quitclaim. Moreover, the supposed resignation was not acknowledged before a notary public. Petitioner's failure to deny that Sugarland is its sister company and that petitioner absorbed Sugarland's security contract and security personnel assumes overriding significance over the resignation theorized upon, evincing petitioner's design to ignore or violate labor laws through the use of the veil of corporate personality. The Court cannot sanction the practice of some companies which, shortly after a worker has become a regular employee, effects the transfer of the same employee to another entity whose owners are the same, or identical, in order to deprive subject employee of the benefits and protection he is entitled to under the law.

On the issue as to whether the private respondent is a probationary or regular employee, the Court holds that the latter became a regular employee upon completion of his six-month period of probation. Private respondent started working on January 30, 1988 and completed the said period of probation on July 27, 1988. Thus, at the time private respondent was dismissed on August 1, 1988, he was already a regular employee with a security of tenure. He could only be dismissed for a just and authorized cause.

There is no basis for subjecting private respondent to a new probationary or temporary employment on January 30, 1988, considering that he was already a regular employee when he was absorbed by A' Prime from Sugarland, its sister company.

On the issue of whether the dismissal of private respondent was unjust and illegal, the Court rules in the affirmative. Subject letter of August 1, 1988 for the dismissal of private respondent from his employment stated:

"x x x

Dear Mr. Moreno,

> You were hired by this agency as security guard on a six -month probationary appointment on 30 January 1988.
>
> Much as we would like to retain you, it is unfortunate that you were not able to live up with the standard expected of you as a security guard.
>
> In line with this and pursuant to paragraph 6 of said Probationary Appointment,[9] which you have signed on 30 January 1988, we are constrained to terminate your services with us for cause effective this date.
>
> We hope you understand our position on this regard.

Very truly yours,

(SGD.) REYNALDO M. ARDINA

President"[10]

The dismissal of private respondent was presumably based on the results of his behavioral and neuropsychological tests and on his violation of a company rule on sleeping on post. With respect to the behavioral and neuropsychological tests, the Court agrees with NLRC's assessment, to wit:

> "Complainant's result of his behavioral research and neuropsychological test to our mind, is of no moment, considering that the said test appeared to have been conveniently contrived to be conducted, and the result produced on the very day of his dismissal, in question. Were respondent-appellant really sincere in its motive of fully screening its employees before they could be regularized it should have done so, prior to complainant's hiring or even after the commission of complainant's infractions of the company rules adverted to by appellant way back in March 1988, when complainant was only about two (2) months on probation. But that is not the case herein.
>
> Moreover, We have observed a discrepancy in the results of the test for while in the first page of the Evaluation Report, in question, complainant was ruled as:
>
> 'Steadiness and Endurance under pressure - Average'
>
> the summary on page thereof, by way of interpretation of such rating, states:
>
> 'Under pressure, he needs emotional support.'
>
> It would not be farfetched for us therefore to surmise that the evaluator's mind was already preconditioned towards buttressing respondent's intent of terminating complainant's employment, considering that the same, to reiterate, was issued on the very day of the dismissal, in question."

So also, private respondent's alleged violations of sleeping on post, and quarrelling with a co-worker, may not be proper grounds for dismissal, as the same were first infractions. Circular No. I dated March 16, 1983 of A' Prime Security Services, Inc.,[11] governing discipline, suspension and separation from the service of security guards, provides:

> "SECTION VIII - SLEEPING ON POST
>
> Any Security/Lady guard who is found sleeping while on post shall be punished as follows:
>
> 1st Offense - Warning 2nd Offense - 30 days suspension without pay 3rd Offense - Dismissal
>
> SECTION IX - CHALLENGING A POSTED SECURITY/LADY GUARD AND SUPERIORS
>
> Any Security/Lady guard who challenges, assaults, provokes and insults an officially posted Security/Lady

guard shall be punished:

1st Offense - One (1) month suspension 2nd Offense - Dismissal"

As the infractions of Sections VIII and IX of Circular No. 1 by private respondent were first offenses, they were not punishable by dismissal. They were not valid grounds for terminating the employment of private respondent.

What is more, as found by the NLRC, the private respondent was not given a chance to contest his dismissal. He was deprived of an opportunity to be heard.

Premises studiedly viewed in correct perspective, the Court is of the irresistible finding and conclusion that the dismissal of private respondent, a regular employee, was sans any just, legal and valid basis.

WHEREFORE, the petition is DISMISSED; and the Decision, dated April 20, 1992, and Resolution, dated June 25, 1992, of the National Labor Relations Commission in NLRC NCR Case No. 00-02-01038-89, AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Penned by Presiding Commissioner Edna Bonto-Perez and concurred by Commissioners Domingo H. Zapanta and Rustico L. Diokno.

[2] Rollo, pp. 27- 31.

[3] Ibid., pp. 33-49.

[4] Ibid., pp. 53-55.

[5] See Resolution dated June 25, 1992, Rollo, p. 50.

[6] Section 1, Rule 9, Rules of Court: "Allegations not specifically denied deemed admitted. -- Material averment in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied. Allegations of usury are deemed admitted if not denied specifically and under oath."

[7] Section 3, Rule I, Revised Rules of the NLRC: "Suppletory application of Rules of Court and jurisprudence. -- In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, the pertinent provisions of the Revised Rules of Court of the Philippines and prevailing jurisprudence may, in the interest of expeditious labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect."

[8] Rollo, p. 51.

[9] "Notwithstanding your probationary appointment, the Agency reserves the right to terminate your services for just cause even before the expiration of the term, as provided by law, or if your services are not satisfactory. Six (6) month after the effectivity of your probationary appointment, you shall report to this office without fail. Your overall performance will be analyzed and we will decide whether we will extend your services or not."

[10] See NLRC Decision, Rollo, p. 41.

[11] Rollo, pp. 58-61.

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