

DOMINGO ABAD, TEODORICO ABUAN, RODOLFO ADRIATICO, DAVID ALAMBRA, ARTURO AMBROCIO, ALFREDO APILADO, LAUREANO APILADO, RODOLFO ARIZ, JOSE BALAGOT, MARIANO BALAGOT, JOSE BARNACHEA,...

G.R. No. 108996. February 20, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari seeking to set aside the decision[1] of the National Labor Relations Commission, Third Division, dated November 17, 1992. Said decision reversed the decision of the Labor Arbiter[2] which found for herein petitioners.

The facts of the case are as follows:

Private respondent Atlantic Gulf and Pacific Co. is a construction company engaged, among other things, in building offshore marine structures for third parties.[3]

Petitioners were hired by private respondent by its Offshore and Marine Services Division (OMSD). They were employed as mechanic, electrician, welder, painter, equipment operator, rigger, driver, carpenter, pipelifter, oiler, sandblaster, timekeeper, foreman, welder, clerk, equipment checker, and other related employment.[4]

The operations of the OMSD were based in Poro Point, San Fernando, La Union, where materials needed for private respondent's construction activities were fabricated. This was known as the Poro Point Project.[5]

Private respondent treated petitioners as project workers, claiming that the hiring of workers was based on the availability of project contracts and was thus done on and off. Workers were hired for definite periods of time, with tenure depending on the need for each worker's particular skills.[6]

Petitioners had been in the service of private respondent for a period of three to ten years until their termination on different dates during the period 1973-1976. They instituted two separate complaints before the NLRC praying for reinstatement. They alleged that they were non-project employees who should have become regular employees after completing one year of service and that, as regular employees, they would have been entitled to benefits extended to regular employees under the company's CBA as well as to other benefits enjoyed by regular employees. They charged private respondent with unfair labor practice, declaring that the services of some of them were terminated after the institution of their complaints.

In 1977, both complaints were archived upon motion of petitioners to hold hearings on the cases in abeyance. They filed the motion because at that time an "identical and analogous"[7] case (Jose Abuan, et al. v. AG&P, docketed as NLRC Case No. RBIV-1746-75) was pending appeal in the Office of the Secretary of Labor. Deferment of the hearings was requested "in order to avoid any conflicting decision on the same facts and the legal and constitutional questions in whatever decision of the Labor Arbiter might render with that of the Higher Tribunal..."[8]

The Abuan case was elevated to the Supreme Court^[9] and was finally decided on July 11, 1980 when this Court denied for lack of merit the motion filed by petitioners in that case for reconsideration of the Court's earlier resolution^[10] denying their petition for certiorari.

On November 10, 1981, petitioners moved for the revival of these cases. Petitioners reiterated their motion by filing another motion to revive the cases on April 8, 1986. Their motion could not be resolved, however, as the records could not be located.

On June 2, 1987, a "Motion to Reconstitute Records of the Above-Entitled Cases or Revival of the Cases" was filed by the complainants. By that time, however, the records had been located. Consequently, Labor Arbiter Daisy G. Cauton-Barcelona ordered the records of the cases to be forwarded to the Region I Arbitration Branch in San Fernando, La Union for further proceedings. This was done and, on August 29, 1991, Labor Arbiter Ricardo Olarez ruled in favor of petitioners. He held that petitioners were non-project employees which, pursuant to Policy Instructions No. 20, were those employed by construction companies without reference to any particular project. The Labor Arbiter pointed out that AG&P made petitioners sign employment contracts every 15th and 30th of every month. When the contracts were presented to petitioners for signing, they contained blanks as to the workers' designation, rate of wages, duration of employment, the name of the project they were to work on and the duration of the project. This procedure appeared to be the norm in private respondent's company as it continued throughout the duration of petitioners' employment whose duration ranged from three to ten years.^[11]

In addition, the Labor Arbiter found that petitioners continued working for private respondent even when there were no major projects to work on. The workers performed jobs related to the maintenance, repair, planning, and programming of both existing and prospective projects.^[12]

The Labor Arbiter also pointed out that the petitioners worked continuously for private respondent for three to ten years. He cited the service records submitted by petitioners which showed that their service with AG&P was unbroken although they were hired in different capacities on different periods. From the service records, the Labor Arbiter concluded that the petitioners' jobs were essential to AG&P's business of building offshore and marine structures and did not depend on any particular project.^[13]

Accordingly, the Labor Arbiter ordered private respondent to reinstate petitioners and to pay them full backwages and other benefits equivalent to three years without any deduction or qualification. Petitioners were given the option to avail of separation pay instead, amounting to one month pay for every year of service including the period when they were supposed to have been reinstated. For those who had reached retirement age during the pendency of the cases, the Labor Arbiter ordered payment of separation pay equivalent to one month pay per year of service. The same amount of separation pay was likewise ordered paid to the heirs of those petitioners who died while the cases were pending.^[14]

The Labor Arbiter also ordered private respondent to pay petitioners all the benefits and salary increases they could have received as regular employees, including those granted under the CBA, with legal interest of one percent per month compounded annually until the same are fully and actually paid. Litigation expenses and attorney's fees were likewise ordered paid.^[15]

Private respondent appealed to the NLRC which reversed the decision of the Labor Arbiter in a ruling dated November 17, 1992. The NLRC cited the case of *Abuan, et al. v. AG&P* which it said presented substantially the same facts as these cases. It pointed out that petitioners, like the complainants in the Abuan case, also worked in private respondent's Poro Point Project with contracts of employment with durations ranging from 15 to 30 days. The contracts specified the projects to which the complainants were assigned. The complainants in Abuan were separated from employment due to the expiration of their employment contracts. The workers in that case were held to be project employees, and so should it be for the workers in these cases.

At the same time, however, the NLRC ordered private respondents to pay petitioners backwages in the amount

of P967,107.00 from July 2, 1992, the date when petitioners filed a motion for reinstatement, to November 17, 1992, the date of the NLRC decision, for failure of private respondent AG&P to reinstate them pending appeal.

Petitioners then filed this petition for certiorari, alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the Labor Arbiter's decision based on the principle of stare decisis.[16]

Petitioners assert that the NLRC should have ruled on the issue of whether or not the workers were regular employees based on the available evidence instead of merely invoking stare decisis.

The petition is without merit.

First. Petitioners themselves asserted in their motion to suspend proceedings before the Labor Arbiter that they were asking for a deferment of the hearings because of the pendency of the "identical and analogous"[17] case of Jose Abuan, et al. v. AG&P "to avoid any conflicting decision on the same facts and the legal and constitutional questions in whatever decision of the Labor Arbiter might render with that of the Higher Tribunal..."

The NLRC ruled in Abuan that the workers involved therein were project employees. It found that "[t]he records [of the case] show the specific projects to which complainants have been assigned." Such projects had been terminated by the time of the workers' separation from the service. The absence of new construction projects, and thus the lack of work for which they may be rehired, was not disputed by the workers. This decision was affirmed on appeal by the Secretary of Labor and the Office of the President. This Court denied the petition for certiorari seeking to set aside that decision.[18]

The NLRC pointed out that petitioners themselves had admitted the similarity between their case and the Abuan case. Hence,

Applying the principle of stare decisis, the instant complaints should be dismissed. Stare decisis declares that, for the sake of certainty, a conclusion reached in one case should be applied to those which follow, if the facts are substantially the same, even though the parties may be different.[19]

Indeed, the facts and the questions involved in Abuan and the present case are the same. Petitioners themselves did admit as much when they filed their motion to hold hearings in abeyance pending the final determination of the issues in Abuan, to avoid any conflict in the decisions in the two cases.

The workers in Abuan and the petitioners were all hired to work in private respondent's Poro Point Project, and were attached to private respondent's Offshore and Marine Services Division.

The workers in the Abuan case were engaged by AG&P to work as supervisor, engineer, paymaster, carpenter, warehouseman, clerk, painter, equipment checker, electrician, accountant, personnel officer, and timekeeper. Except for the supervisor, engineer, accountant, and personnel officer $\frac{3}{4}$ which made up 17 out of the 37 workers therein $\frac{3}{4}$ the workers in the Abuan case had essentially the same nature of employment as petitioners. Petitioners worked for private respondent as foreman, warehouseman, rigger, carpenter, oiler, clerk, machinist, electrician, sandblaster, equipment checker, and similar types of employment. They were mostly performing manual work.

Like the workers in Abuan, petitioners in this case also had contracts with periods ranging from 15 days to 30 days. The contracts of both sets of workers were renewed several times such that the workers spent more than a year working for private respondent. The workers in Abuan as well as the petitioners were separated from the service upon the completion of the projects to which they were assigned. After such separation, they filed separate complaints seeking the same relief: recognition of their regular status, their reinstatement and payment of salaries and benefits due regular workers. Thus the workers in Abuan and petitioners in the present case were similarly situated.

Petitioners herein, like the workers in Abuan, are project employees, assigned to work in a particular construction project.[20] They are workers whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of their engagement.[21]

In the proceedings before the Labor Arbiter, however, petitioners claimed in an affidavit that private respondent made them sign blank employment contracts. This implied that the project to which they would be assigned as well as the duration and termination thereof was not determined at the time of their engagement. A similar assertion made by workers in Abuan was rejected by the NLRC.

There is clearly no grave abuse of discretion on the part of the NLRC in applying the rule in Abuan to these cases. The NLRC's decision in Abuan was based on the same facts and issues present in this case. It was but proper and logical for the NLRC to arrive at the same conclusions in the two cases.

The Solicitor General cites the case of Caramol v. NLRC[22] to support his contention that petitioners are regular employees. In that case, petitioner Rogelio Caramol, was employed by AG&P on a project-to-project basis. His employment was renewed 44 times by AG&P. He was not re-admitted by the company after he participated in a strike in 1986. Throughout Caramol's 13-year employment with AG&P, he continued to perform the same kind of work as a rigger. This Court held that this clearly showed that Caramol was a regular employee, his work being usually necessary or desirable in the usual business or trade of his employer, considering his successive contracts with AG&P and the fact that he was doing only one type of work.

However, this case differs materially from the case of Caramol. While in Caramol the worker was engaged in only one type of work, the petitioners herein performed different types of work throughout the duration of their employment. As the Labor Arbiter found in this case, each of the petitioners was employed in various capacities, as follows:[23]

The service record of Domingo Abad (Annex "A") shows that he started work with respondent company as an Unskilled Laborer from December 10, 1970 to February 1, 1971. This was followed by a series of services as Junior Mechanic all the way from May 2, 1971 to November 20, 1971, then from November 21, 1971 to June 28, 1972, from June 29, 1972 to December 20, 1972, then from December 21, 1972 to December 16, 1973.

For a duration of three (3) years, there was only one instance when there was a short break, from February 2, 1971 to May 2, 1971, or a break of three (3) months. After his initial service of almost two (2) months as unskilled laborer, there was a break of three (3) months, then an unbroken service as Junior Mechanic of almost three (3) years.

Another service record marked as Annex "A-9" is that of Jose P. Casuga, Jr. He started as an Unskilled Laborer and worked as such from October 16, 1969 to December 12, 1971. Without a break, this was followed by a series of services as Watchman and as Junior Mechanic up to his last day of service on September 27, 1973, an unbroken service of four (4) years.

One service record, that of Seninando Galvez (Annex "A-23") shows a period of employment with respondent of three (3) years from April 13, 1966 to February 28, 1969, when he was allegedly laid off and another two (2) years from April 4, 1972 to March 31, 1974, when he was laid off again.

That of Jose L. Sotto (Annex "A-36") shows an unbroken service of more than five (5) years starting from April 27, 1968 ending on September 6, 1973 as Junior Mechanic and then as Machinist II.

That of Mauro M. Quilates (Annex "A-39") also has an unbroken service record of nine (9) years from March 14, 1966 to June 16, 1975, as Carpenter, Pipe-fitter and as Fitter/Cutter.

Another complainant, Benjamin Subala (Annex "A-43") has served respondent company also for an unbroken period of more than six (6) years, from April 6, 1967 to September 26, 1973, as Sandblaster, Leadman

Sandblaster, then as Sub-Foreman Blaster.

That of Mariano M. Balagat (Annex “A-6”) has a record of unbroken service of eight (8) years from September 1966 to October 16, 1974 as Weldor B then as Weldor A.

Complainant Alejandro Campos (Annex “A-16”) had served respondent company for a period of four (4) years without any break, initially as Unskilled Laborer, then a Boiler Operator, and finally as Mechanic.

Ferdinand Casuga (Annex “A-10”) has a service record of three (3) years from March 9, 1972 to December 22, 1975, with a 3-1/2 months break.

Sixto Dato, Sr. (Annex “A-18”) has a long service record of nine (9) years from December 1966 to March 31, 1975 without any single break, working as Heavy Equipment Operator all throughout his employment. (emphasis supplied)

Thus, it is clear from the foregoing that each of the petitioners, or at least a majority of them, was hired in different capacities during different periods of their employment with private respondent. This is an indication that petitioners were indeed hired based on private respondent’s need for a worker’s particular skills.

A case similar to Caramol is that of Samson v. NLRC.[24] This case again involved private respondent and one of its workers who worked for the company as rigger for more than 20 years. We ruled, as in Caramol, that he was a regular employee.

Second. Petitioner filed this petition for certiorari without first filing a motion for reconsideration of the assailed decision.

The rule is that a petition for certiorari may be filed in case a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[25]

Applied to the decisions of the NLRC, this means that a motion for reconsideration must be filed within ten days from a party’s receipt of a copy of the decision.[26] The filing of a motion for reconsideration of the decision of the NLRC is a prerequisite for availing of the remedy of a petition for certiorari before the Supreme Court.[27] Petitioners’ failure to file such a motion is fatal to their petition.

WHEREFORE, the petition is DENIED and the decision of the NLRC is AFFIRMED.

SO ORDERED.

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

[1] Per Commissioner Lourdes C. Javier, concurred in by Commissioner Ireneo B. Bernardo and Commissioner Joaquin A. Vanodra, Rollo, pp. 32-56.

[2] Dated August 29, 1991; id., pp. 57-88.

[3] Id., p. 64.

[4] Id., pp. 7 and 65.

[5] Id., p. 65.

[6] Id., pp. 65-66.

[7]Id., p. 37.

[8] Id., pp. 37-38.

[9] G.R. No. 51808.

[10] Dated June 4, 1980.

[11] Rollo, p. 71.

[12] Ibid.

[13] Id., pp. 71-74.

[14] Id., pp. 84-85.

[15] Id., pp. 85-87.

[16] Id., p. 16.

[17] Supra note 9.

[18] Supra notes 11 and 12.

[19] Rollo, p. 51.

[20] Policy Instruction No. 20.

[21] Labor Code, Art. 280.

[22] 225 SCRA 582 (1993).

[23] Rollo, pp. 71-74.

[24] 253 SCRA 112 (1996).

[25] Rules of Court, Rule 65, §1.

[26] New Rules of Procedure of the NLRC, Rule VII, Sec. 14.

[27] Philippine National Construction Corp. v. NLRC, 245 SCRA 668 (1995); Labudahon v. NLRC, 251 SCRA 129 (1995); Belaunzaran v. NLRC, 265 SCRA 800 (1996).

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