AURELIO SALINAS, JR., ARMANDO SAMULDE, ALEJANDRO ALONZO AND AVELINO CORTEZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ATLANTIC GULF AND PACIFIC CO. OF MANILA, INC....

G.R. No. 114671. November 24, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This petition for review should have been properly initiated and is therefore treated as a special civil action for certiorari under Rule 65. The herein petitioners, Aurelio Salinas, Jr., Armando Samulde, Alejandro Alonzo and Avelino Cortez, assail the Resolution[1] dated January 31, 1994 of the National Labor Relations Commission (NLRC, for brevity) which dismissed their complaint, and affirming, in effect, the Decision[2] of the Labor Arbiter declaring them project employees and not regular employees of respondent Atlantic Gulf and Pacific Company of Manila, Inc. (hereinafter referred to as AG & P).

Petitioner Alejandro Alonzo had been employed with AG & P in the several construction projects of the latter from 1982 to 1989, in the course of which he essentially performed the same job, initially as a laborer, and later as bulk cement operator, bulk cement plant/carrier operator, and crane driver. Under similar circumstances, petitioner Avelino Cortez had been employed with AG & P from 1979 to 1988 as carpenter/forklift operator; petitioner Armando Samulde served as lubeman/stationary operator from 1982 to 1989; while petitioner Aurelio Salinas, Jr., used to work as carpenter/finishing carpenter from 1983 to 1988.

On May 29, June 6, July 4 and July 5 of 1989, respectively, petitioners Salinas, Samulde, Alonzo and Cortez filed against the respondent corporation separate complaints for illegal dismissal, which cases were consolidated and jointly heard by Labor Arbiter Manuel P. Asuncion.

In his Order of dismissal, Labor Arbiter Asuncion found that petitioners are project employees whose work contracts with AG & P indicate that they were employed in such category; that they have been assigned to different work projects, not just to one and that their work relation with AG & P, relative to termination, is governed by Policy Instruction No. 20.

On appeal, NLRC affirmed the said findings of the Labor Arbiter and dismissed the complaint for want of merit, ratiocinating thus:

> "In the first place, examining the contract of employment of complainants herein presented as evidence by respondent, we found that a) they were employed for a specific project and for a specific period; b) that they were assigned to different projects and not just one as earlier claimed by them. In short, from the evidence adduced by respondent which complainants miserably failed to rebut with their one page position paper containing sweeping statements, there appears to be no doubt that they are project employees hired for a specific project. Their subsequent separation from service, therefore, as a result of the completion of the project or its phase did not result in illegal dismissal."[3]

Dissatisfied with the aforesaid disposition below, petitioners found their way to this Court via the present petition posing as the sole issue whether they are regular or project employee.

Petitioners principally argue that following the ruling in the Caramol case,[4] NLRC gravely erred in dismissing their complaint and declaring them project employees. According to them, they had been covered by a number of contracts renewed continuously, with periods ranging from five (5) to nine (9) years, and they performed the same kind of work through out their employment, and such was usually necessary and desirable in the trade or business of the respondent corporation; and their work did not end on a project-to-project basis, although the contrary was made to appear by the employer through the signing of separate employment contracts.

Petitioners emphatically stressed that no report even a single one, was ever submitted by the respondent corporation to the nearest public employment office every time petitioners' employment was terminated pursuant to Policy Instruction No. 20. There being no report, NLRC's insistence that they (petitioners) were respondents corporation's project employees is without any legal basis; petitioners maintain.

In its Manifestation and Motion in Lieu of Comment,[5] the Office of the Solicitor General agrees with the contention of petitioners, to wit:

> "5. Thus, since petitioners had continuously performed the same kind of work during the whole course of their employment x x x their jobs were indeed necessary and desirable to the private respondent's main line of business. And this should be the main consideration in classifying the nature of employment afforded the herein workers.
>
> "6. Furthermore, if private respondent really employed the herein petitioners on a project-to-project basis, it should have submitted a series of reports to the nearest public employment office every time the employment of the workers were terminated, in line with Policy Instruction No. 20 of the Department of Labor. (citation omitted) Private respondent miserably failed to do its obligation under the set-up. This failure effectively belies its assertion that herein petitioners are project employees."[6]

Respondent corporation preliminary contends that the present petition for review should have been brought under Rule 65, Rule 45 not being the proper remedy. Assuming arguendo that the petition should be treated under Rule 65, the petition would still fail for failure of the petitioners to present a motion for reconsideration. It maintains that the instant petition should not be given due course due to non-exhaustion of administrative remedies as required by Section 14, Rule VII (sic). It theorizes further that the questioned Resolution had already become final and executory on March 20, 1994, ten days after receipt thereof by petitioners on March 9, 1994. Respondent corporation also claims that the present petition is insufficient in form, for failure to attach thereto a duplicate original or certified true copies of the complainants-petitioners' position paper, respondent corporation's position paper, and the questioned resolution of the public respondent.

AG & P staunchly claims that the petitioners are mere project employees; that the questioned resolution of public respondent is supported by substantial evidence and therefore, conclusive and binding. According to respondent corporation, factual findings of the NLRC are generally accorded not only respect but, at times, finality as long as such findings are based on substantial evidence; that the doctrinal cases cited by petitioners have no applicability in the case under scrutiny and that the Magante case[7] does not apply because it was therein established that Magante was never deployed from project to project but had been regularly assigned to perform carpentry work; and on the other hand, the Baguio Country Club case[8] pertains to "entertainment-service."

Meanwhile the De Leon case,[9] claims the respondent corporation, bolsters instead, its position since it recognizes the legality of project employment, which is not deemed regular but a separate and distinct category, particularly in the construction business. It also attempts to create a chasm between the doctrinal case of Caramol

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and the present case, allegedly due to different circumstances involved, and citing the implementation of Department Order No. 19, amending Policy Instruction No. 20, which allows the rehiring of project workers on a project-to-project basis (Section 2.3.b), and which considers the report of termination of employment a mere "indicator" of project employment. (Section 2.2)

The petition is impressed with merit.

The present case is on all fours with the cases of Caramol vs. NLRC (penned by Justice Bellosillo) and Samson vs. NLRC[10] (with Justice Regalado as ponente), both of which involved the same private respondent.

In the case of Caramol, petitioner Rogelio Caramol was hired as a rigger by AG & P on a "project-to-project" basis but whose employment was renewed forty-four (44) times by the latter. In holding that Caramol was a regular worker, the Court declared that the successive employment contracts where he was made to perform the same kind of work as a rigger, would clearly manifest that Caramol's tasks were usually necessary or desirable in the usual trade or business of AG & P.[11]

The Court likewise upheld the validity of a "project-to-project" basis contract of employment, provided that "the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former xxx."[12] However, this Court warned, where from the circumstances it is apparent that periods have been imposed to preclude the acquisition of tenurial security by the employee, they should be struck down as contrary to public policy, morals, good custom or public order.[13]

The case of Samson on the other hand, concerned Ismail Samson who served initially as a rigger, as a laborer and finally as a rigger foreman for AG & P, for approximately 28 years. He was also covered by successive employment contracts with gaps of from one (1) day up to one (1) week. Noting the successive contracts of employment, the repeated re-hiring, and petitioner's performance of essentially the same tasks, this Court held that Samson was a regular employee, because these were sufficient evidence that he was performing tasks usually necessary and desirable in the ordinary course of business of AG & P.[14] Thus the Court pronounced:

> "The mandate in Article 281 of the Labor Code, which pertinently prescribes that the `provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements 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' and 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 actually exists,' should apply in the case of petitioner (Samson)."[15]

In the case under consideration, the Court likewise rules that failure to report the termination to Public Employment Office is a clear indication that petitioners were not and are not project employees.

When these consolidated complaints were filed in 1989, and while petitioners were serving the respondent corporation, the rule in force then was Policy Instruction (P.I.) No. 20, which required the employer company to report to the nearest Public Employment Office the fact of termination of project employee as a result of the completion of the project or any phase thereof, in which he is employed. Further, Department Order (D.O.) No. 19, which was issued on April 1, 1993, did not totally dispense with the notice requirement but, instead, made provisions therefor, and considered it as one of the "indicators" that a worker is a project employee.[16]

It is significant to note that the notice of termination requirement has been retained under Section 6.1 of D.O. No. 19, viz:[17]

> "6.1. Requirements of labor and social legislations.--(a) The construction company and the general contractor and/or subcontractor referred to in Sec. 2.5 shall be responsible for the workers in its employ on matters of compliance with the requirements of existing laws and regulations on hours of work, wages, wage-related benefits, health, safety and social welfare benefits, including submission to the DOLE-Regional Office of Work Accident/Illness Report, Monthly Report on Employees' Terminations/Dismissals/Suspensions and other reports. x x x" (Italics supplied)

In light of the cases of Caramol and Samson and the application of P.I. No. 20 as amended by D.O. No. 19, the retroactive or prospective effect of D.O. No. 19 is of no moment. Nevertheless, it was held in Samson vs. NLRC that it is prospective in effect. Otherwise, it would be prejudicial to the employees and would run counter to the constitutional mandate on social justice and protection to labor and furthermore, such view is more in accord with the avowed purpose of said Department Order.[18]

It is basic and irrefragable rule that in carrying out and interpreting the provisions of the Labor Code and its implementing regulations, the workingman's welfare should be the primordial and paramount consideration. The interpretation herein made gives meaning and substance to the liberal and compassionate spirit of the law enunciated in Article 4 of Labor Code that "all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations shall be resolved in favor of labor".[19]

It is beyond cavil that petitioners had been providing the respondent corporation with continuous and uninterrupted services, except for a day or so gap in their successive employment contracts. Their contracts had been renewed several times, with the total length of their services ranging from five (5) to nine (9) years. Throughout the duration of their contracts, they had been performing the same kinds of work (e.g., as lubeman, bulk cement operator and carpenter), which were usually necessary and desirable in the construction business of AG & P, its usual trade or business.

Undoubtedly, periods in the present case have been imposed to preclude the acquisition of tenurial security by petitioners, and must be struck down for being contrary to public policy, morals, good customs or public order.

Anent the issue that the petition should have been brought under Rule 65 and not under Rule 45 of the Revised Rules of Court, this rule is not inflexible.[20] In the interest of justice, often the Court has judiciously treated as special civil actions for certiorari petitions erroneously captioned as petitions for review on certiorari.[21]

With regard to the issue on non-exhaustion of administrative remedies, the Court hold that the failure of petitioners to interpose a motion for reconsideration of the NLRC decision before coming to this Court was not a fatal omission. The exhaustion of administrative remedies doctrine is not a hard and fast rule and does not apply where the issue is purely a legal one.[22] A motion for reconsideration as a prerequisite for the bringing of an action under Rule 65 may be dispensed with where the issue is purely of law, as in this case.[23] At all events and in the interest of substantial justice, especially in cases involving the rights of workers, procedural lapses, if any, may be disregarded to enable the Court to examine and resolve the conflicting rights and responsibilities of the parties. This liberality is warranted in the case at bar, especially since it has been shown that the intervention of the Court is necessary for the protection of the herein petitioner(s).[24]

WHEREFORE, the questioned Resolution of the NLRC in NLRC NCR Case No. 00-05-02489-89; NLRC NCR Case No. 00-06-02621-89; NLRC NCR Case No. 00-06-02815-89; NLRC NCR Case No. 00-07-03095-89; and NLRC NCR Case No. 00-07-03129-89, is SET ASIDE and another one is hereby ENTERED ordering the respondent corporation to reinstate petitioners without loss of seniority and with full backwages. Costs against the respondent corporation.

SO ORDERED.

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

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[1] Annex "E" Rollo, p. 32.

[2] Annex "A" Ibid, p. 18.

[3] Id, p. 36.

[4] Caramol vs. NLRC, et. al. 225 SCRA 582 (1993).

[5] Rollo, p. 63.

[6] Id, pp. 67-68.

[7] Magante vs. NLRC, 185 SCRA 21 (1990).

[8] Baguio Country Club Corporation vs. NLRC, 206 SCRA 643 (1992).

[9] De Leon vs. NLRC, 176 SCRA 615 (1989).

[10] 253 SCRA 112 (1996).

[11] Supra, p. 587.

[12] Id, p. 586; quoting Brent School vs. Zamora, 181 SCRA 702 (1990).

[13] Id.

[14] Supra, p. 123, citing the cases of Caramol and Baguio Country Club.

[15] Id.

[16] Id, p. 121.

[17] Id, p. 122.

[18] Id.

[19] Id, pp. 122-123; quoting International Travel Service vs. Minister of Labor, et. al., 188 SCRA 456 (1990).

[20] Salazar vs. NLRC, 256 SCRA 273, 281 (1996).

[21] Ibid, p. 281.

[22] Samson case, ante, p. 124. See also: Commissioner of Immigration vs. Vamenta, Jr., etc., et. al., 45 SCRA 342; Del Mar vs. Philippine Veterans Administration, 51 SCRA 340; Bagatsing, etc., et. al. vs. Ramirez, etc. et. al., 74 SCRA 306.

[23] Ibid, p. 124, citing Philippine Airlines Employees Association vs. Philippine Air Lines, Inc., et. al., 111 SCRA 215 (1982).

[24] Id, pp. 125-126, citing Ranara vs. NLRC, et. al., 212 SCRA 631 (1992).

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