PERPETUAL HELP CREDIT COOPERATIVE, INC., PETITIONER, VS. BENEDICTO FABURADA, SISINITA VILLAR, IMELDA TAMAYO, HAROLD CATIPAY, AND THE NATIONAL LABOR RELATIONS COMMISSION, FOURTH ...

G.R. No. 121948. October 08, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

On January 3, 1990, Benedicto Faburada, Sisinita Vilar, Imelda Tamayo and Harold Catipay, private respondents, filed a complaint against the Perpetual Help Credit Cooperative, Inc. (PHCCI), petitioner, with the Arbitration Branch, Department of Labor and Employment (DOLE), Dumaguete City, for illegal dismissal, premium pay on holidays and rest days, separation pay, wage differential, moral damages, and attorney's fees.

Forthwith, petitioner PHCCI filed a motion to dismiss the complaint on the ground that there is no employer-employee relationship between them as private respondents are all members and co-owners of the cooperative. Furthermore, private respondents have not exhausted the remedies provided in the cooperative by-laws.

On September 3, 1990, petitioner filed a supplemental motion to dismiss alleging that Article 121 of R.A. No. 6939, otherwise known as the Cooperative Development Authority Law which took effect on March 26, 1990, requires conciliation or mediation within the cooperative before a resort to judicial proceeding.

On the same date, the Labor Arbiter denied petitioner's motion to dismiss, holding that the case is impressed with employer-employee relationship and that the law on cooperatives is subservient to the Labor Code.

On November 23, 1993, the Labor Arbiter rendered a decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring complainants illegally dismissed, thus respondent is directed to pay Complainants backwages computed from the time they were illegally dismissed up to the actual reinstatement but subject to the three year backwages rule, separation pay for one month for every year of service since reinstatement is evidently not feasible anymore, to pay complainants 13th month pay, wage differentials and Ten Percent (10%) attorney's fees from the aggregate monetary award. However, complainant Benedicto Faburada shall only be awarded what are due him in proportion to the nine and a half months that he had served the respondent, he being a part-time employee.
>
> All other claims are hereby dismissed for lack of merit.
>
> The computation of the foregoing awards is hereto attached and forms an integral part of this decision."

On appeal[1], the NLRC affirmed the Labor Arbiter's decision.

Hence, this petition by the PHCCI.

The issue for our resolution is whether or not respondent judge committed grave abuse of discretion in ruling that there is an employer-employee relationship between the parties and that private respondents were illegally dismissed.

Petitioner PHCCI contends that private respondents are its members and are working for it as volunteers. Not being regular employees, they cannot sue petitioner.

In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the worker or the power to hire; (2) the power to dismiss; (3) the payment of wages by whatever means; and (4) the power to control the worker's conduct, with the latter assuming primacy in the overall consideration. No particular form of proof is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence may show the relationship.[2]

The above elements are present here. Petitioner PHCCI, through Mr. Edilberto Lantaca, Jr., its Manager, hired private respondents to work for it. They worked regularly on regular working hours, were assigned specific duties, were paid regular wages and made to accomplish daily time records just like any other regular employee. They worked under the supervision of the cooperative manager. But unfortunately, they were dismissed.

That an employer-employee exists between the parties is shown by the averments of private respondents in their respective affidavits, carefully considered by respondent NLRC in affirming the Labor Arbiter's decision, thus:

> Benedicto Faburada -Regular part-time Computer programmer/ operator. Worked with the Cooperative since June 1, 1988 up to December 29, 1989. Work schedule: Tuesdays and Thursdays, from 1:00 p.m. to 5:30 p.m. and every Saturday from 8:00 to 11:30 a.m. and 1:00 to 4:00 p.m. and for at least three (3) hours during Sundays. Monthly salary: P1,000.00 -from June to December 1988; P1,350.00 - from January to June 1989; and P1,500.00 from July to December 1989. Duties: Among others, Enter data into the computer; compute interests on savings deposits, effect mortuary deductions and dividends on fixed deposits; maintain the masterlist of the cooperative members; perform various forms for mimeographing; and perform such other duties as may be assigned from time to time.
>
> Sisinita Vilar -Clerk. Worked with the Cooperative since December 1, 1987 up to December 29, 1989. Work schedule: Regular working hours. Monthly salary: P500.00 - from December 1, 1987 to December 31, 1988; P1,000.00 - from January 1, 1989 to June 30, 1989; and P1,150.00 - from July 1, 1989 to December 31, 1989. Duties: Among others, Prepare summary of salary advances, journal vouchers, daily summary of disbursements to respective classifications; schedule loans; prepare checks and cash vouchers for regular and emergency loans; reconcile bank statements to the daily summary of disbursements; post the monthly balance of fixed and savings deposits in preparation for the computation of interests, dividends, mortuary and patronage funds; disburse checks during regular and emergency loans; and perform such other bookkeeping and accounting duties as may be assigned to her from time to time.
>
> Imelda C. Tamayo - Clerk. Worked with the Cooperative since October 19, 1987 up to December 29, 1989. Work schedule: Monday to Friday - 8:00 to 11:30 a.m and 2:00 to 5:30 p.m.; every Saturday - 8:00 to 11:30 a.m and 1:00 to 4:00 p.m; and for one Sunday each month - for at least three (3) hours. Monthly salary: P60.00 - from October to November 1987; P250.00 for December 1987; P500.00 - from January to December 1988; P950 - from January to June 1989; and P1,000.00 from July to December 1989. Duties: Among others, pick up balances for the computation of interests on savings deposit, mortuary, dividends and patronage funds; prepare cash vouchers; check petty cash vouchers; take charge of the preparation of new passbooks and ledgers for new applicants; fill up members logbook of regular depositors, junior depositors and special accounts; take charge of loan releases every Monday morning; assist in the posting and preparation of deposit slips; receive deposits from members; and perform such other bookkeeping and accounting duties as may be assigned her from time to time.

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> Harold D. Catipay - Clerk. Worked with the Cooperative since March 3 to December 29, 1989. Work schedule: - Monday to Friday - 8:00 to 11:30 a.m. and 2:00 to 5:30 p.m.; Saturday - 8:00 to 11:30 a.m. and 1:00 to 4:00 p.m.; and one Sunday each month - for at least three (3) hours. Monthly salary: P900.00 - from March to June 1989; P1,050.00 - from July to December 1989. Duties: Among others, Bookkeeping, accounting and collecting duties, such as, post daily collections from the two (2) collectors in the market; reconcile passbooks and ledgers of members in the market; and assist the other clerks in their duties.
>
> All of them were given a memorandum of termination on January 2, 1990, effective December 29, 1989.

We are not prepared to disregard the findings of both the Labor Arbiter and respondent NLRC, the same being supported by substantial evidence, that quantum of evidence required in quasi-judicial proceedings, like this one..

Necessarily, this leads us to the issue of whether or not private respondents are regular employees. Article 280 of the Labor Code provides for three kinds of employees: (1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose 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; and (3) casual employees or those who are neither regular nor project employees.[3] The employees who are deemed regular are: (a) those who have been engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer; and (b) those casual employees who have rendered at least one (1) year of service, whether such service is continuous or broken, with respect to the activity in which they are employed.[4] Undeniably, private respondents were rendering services necessary to the day-to-day operations of petitioner PHCCI. This fact alone qualified them as regular employees.

All of them, except Harold D. Catipay, worked with petitioner for more than one (1) year: Benedicto Faburada, for one and a half (1 1/2) years; Sisinita Vilar, for two (2) years; and Imelda C. Tamayo, for two (2) years and two (2) months. That Benedicto Faburada worked only on a part-time basis, does not mean that he is not a regular employee. One's regularity of employment is not determined by the number of hours one works but by the nature and by the length of time one has been in that particular job.[5] Petitioner's contention that private respondents are mere volunteer workers, not regular employees, must necessarily fail. Its invocation of San Jose City Electric Cooperative vs. Ministry of Labor and Employment (173 SCRA 697, 703 (1989) is misplaced. The issue in this case is whether or not the employees-members of a cooperative can organize themselves for purposes of collective bargaining, not whether or not the members can be employees. Petitioner missed the point.

As regular employees or workers, private respondents are entitled to security of tenure. Thus, their services may be terminated only for a valid cause, with observance of due process.

The valid causes are categorized into two groups: the just causes under Articles 282 of the Labor Code and the authorized causes under Articles 283 and 284 of the same Code. The just causes are: (1) serious misconduct or willful disobedience of lawful orders in connection with the employee's work; (2) gross or habitual neglect of duties; (3) fraud or willful breach of trust; (4) commission of a crime or an offense against the person of the employer or his immediate family member or representative; and, analogous cases. The authorized causes are: (1) the installation of labor-saving devices; (2) redundancy; (3) retrenchment to prevent losses; and (4) closing or cessation of operations of the establishment or undertaking, unless the closing is for the purpose of circumventing the provisions of law. Article 284 provides that an employer would be authorized to terminate the services of an employee found to be suffering from any disease if the employee's continued employment is prohibited by law or is prejudicial to his health or to the health of his fellow employees[6]

Private respondents were dismissed not for any of the above causes. They were dismissed because petitioner considered them to be mere voluntary workers, being its members, and as such work at its pleasure. Petitioner thus vehemently insists that their dismissal is not against the law.

Procedural due process requires that the employer serve the employees to be dismissed two (2) written notices before the termination of their employment is effected: (a) the first, to apprise them of the particular acts or omissions for which their dismissal is sought and (b) the second, to inform them of the decision of the employer that they are being dismissed.[7] In this case, only one notice was served upon private respondents by petitioner. It was in the form of a Memorandum signed by the Manager of the Cooperative dated January 2, 1990 terminating their services effective December 29, 1989. Clearly, petitioner failed to comply with the twin requisites of a valid notice.

We hold that private respondents have been illegally dismissed.

Petitioner contends that the labor arbiter has no jurisdiction to take cognizance of the complaint of private respondents considering that they failed to submit their dispute to the grievance machinery as required by P.D 175 (strengthening the Cooperative Movement)[8] and its implementing rules and regulations under LOI 23. Likewise, the Cooperative Development Authority did not issue a Certificate of Non-Resolution pursuant to Section 8 of R.A. 6939 or the Cooperative Development Authority Law.

As aptly stated by the Solicitor General in his comment, P.D. 175 does not provide for a grievance machinery where a dispute or claim may first be submitted. LOI 23 refers to instructions to the Secretary of Public Works and Communications to implement immediately the recommendation of the Postmaster General for the dismissal of some employees of the Bureau of Post. Obviously, this LOI has no relevance to the instant case.

Article 121 of Republic Act No. 6938 (Cooperative Code of the Philippines) provides the procedure how cooperative disputes are to be resolved, thus:

> "ART. 121. Settlement of Disputes.- Disputes among members, officers, directors, and committee members, and intra-cooperative disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the bylaws of the cooperative, and in applicable laws.
>
> Should such a conciliation/mediation proceeding fail, the matter shall be settled in a court of competent jurisdiction."

Complementing this Article is Section 8 of R.A. No. 6939 (Cooperative Development Authority Law) which reads:

> SEC. 8 Mediation and Conciliation.- Upon request of either or both parties, the Authority shall mediate and conciliate disputes within a cooperative or between cooperatives: Provided, That if no mediation or conciliation succeeds within three (3) months from request thereof, a certificate of non-resolution shall be issued by the Commission prior to the filing of appropriate action before the proper courts.

The above provisions apply to members, officers and directors of the cooperative involved in disputes within a cooperative or between cooperatives.

There is no evidence that private respondents are members of petitioner PHCCI and even if they are, the dispute is about payment of wages, overtime pay, rest day and termination of employment. Under Art. 217 of the Labor Code, these disputes are within the original and exclusive jurisdiction of the Labor Arbiter.

As illegally dismissed employees, private respondents are therefore entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowances, plus other benefits or their

monetary equivalent computed from the time their compensation was witheld from them up to the time of their actual reinstatement.[9] Since they were dismissed after March 21, 1989, the effectivity date of R.A. 6715[10] they are granted full backwages, meaning, without deducting from their backwages the earnings derived by them elsewhere during the period of their illegal dismissal.[11] If reinstatement is no longer feasible, as when the relationship between petitioner and private respondents has become strained, payment of their separation pay in lieu of reinstatement is in order.[12]

WHEREFORE, the petition is hereby DENIED. The decision of respondent NLRC is AFFIRMED, with modification in the sense that the backwages due private respondents shall be paid in full, computed from the time they were illegally dismissed up to the time of the finality of this Decision.[13]

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.

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[1] Rollo, p. 8.

[2] Opulencia Ice Plant and Storage vs. National Labor Relations Commission, G.R. No. 98368, December 15, 1993, 228 SCRA 473, 478; Curdanetaan Piece Workers Union vs. Laguesma, G.R. No. 113542 and G.R. No. 114911, February 24, 1998, 286 SCRA 401, 420; Vinoya vs. National Labor Relations Commission, G.R. No. 126586, February 2, 2000, 324 SCRA 469, 485.

[3] Villa vs. National Labor Relations Commission, G.R. 117043, January 14, 1998, 284 SCRA 105, 127; Philippine Federation of Credit, Inc. vs. National Labor Relations Commission, G.R. No. No. 121071, December 11, 1998, 300 SCRA 72, 77.

[4] Romares vs. National Labor Relations Commission, G.R. No, 122327. August 19, 1998, 294 SCRA 411, 415; Philippine Fruit and Vegetable Industries, Inc. vs. National Labor Relations Commission, G.R. No. 122122, July 20, 1999, 310 SCRA 673, 681.

[5] International Pharmaceuticals, Inc. vs. National Labor Relations Commission (4th Division), G.R. No. 106331, March 9, 1998, 287 SCRA 213, 224.

[6] Edge Apparel, Inc. vs. National Labor Relations Commission, G.R. No. 121314, February 12, 1998, 286 SCRA 302, 309-310.

[7] Maneja vs. National Labor Relations Commission, G.R. No. 124013, June 5, 1998, 290 SCRA 603, 623-624; Tan vs. National Labor Relations Commission, G.R. No. 128290, November 24, 1998, 299 SCRA 169, 185.

[8] Repealed by express provision of Art. 127 of R.A. No. 6938 (The Cooperative Code of the Philippines) but then in force at the time the complaint was filed with the DOLE.

[9] Art. 279, Labor Code

[10] Republic Act No. 6715 - An Act to extend protection to labor, strengthen the constitutional rights of workers to self-organization, collective bargaining and peaceful concerted activities, foster industrial peace and harmony, promote the preferential use of voluntary modes of settling labor disputes, and reorganize the National Labor Relations Commission, amending for these purposes certain provisions of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, appropriating funds therefor, and for other purposes.

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[11] Bustamante vs. National Labor Relations Commission, G.R. no. 111651, November 28, 1996, 265 SCRA 61, 70-71, cited in Highway Coprra Traders vs. NLRC-Cagayan de Oro, 293 SCRA 350, 356-357 and in Pepsi-Cola Products Philippines Incorporated vs. NLRC, 315 SCRA 587, 598

[12] Samillano vs. National Labor Relations Commission, G.R. No. 117582, December 23, 1996, 265 SCRA 788, 798, citing De Vera vs. National Labor Relations Commission, 191 SCRA 632, 634

[13] Samillano vs. NLRC, 265 SCRA 788, 798-799.

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