

**OSIAS I. CORPORAL, SR., PEDRO TOLENTINO, MANUEL CAPARAS,
ELPIDIO LACAP, SIMPLICIO PEDELOS, PATRICIA NAS, AND
TERESITA FLORES, PETITIONERS, VS. NATIONAL LABOR RELATIONS
COMMISSIO...**

G.R. No. 129315. October 02, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari seeks the review of the Resolution dated October 17, 1996 of public respondent National Labor Relations Commission (First Division),[1] in NLRC NCR Case No. 00-04-03163-95, and the Resolution dated March 5, 1997 denying the motion for reconsideration. The aforementioned October 17th Resolution affirmed the Decision dated September 28, 1996 of Labor Arbiter Potenciano S. Cañizares dismissing the petitioners' complaint for illegal dismissal and declaring that petitioners are not regular employees of private respondent Lao Enteng Company, Inc..

The records of the case show that the five male petitioners, namely, Osias I. Corporal, Sr., Pedro Tolentino, Manuel Caparas, Elpidio Lacap, and Simplicio Pedelos worked as barbers, while the two female petitioners, Teresita Flores and Patricia Nas worked as manicurists in New Look Barber Shop located at 651 P. Paterno Street, Quiapo, Manila owned by private respondent Lao Enteng Co. Inc.. Petitioner Nas alleged that she also worked as watcher and marketer of private respondent.

Petitioners claim that at the start of their employment with the New Look Barber Shop, it was a single proprietorship owned and managed by Mr. Vicente Lao. In or about January 1982, the children of Vicente Lao organized a corporation which was registered with the Securities and Exchange Commission as Lao Enteng Co. Inc. with Trinidad Ong as President of the said corporation. Upon its incorporation, the respondent company took over the assets, equipment, and properties of the New Look Barber Shop and continued the business. All the petitioners were allowed to continue working with the new company until April 15, 1995 when respondent Trinidad Ong informed them that the building wherein the New Look Barber Shop was located had been sold and that their services were no longer needed.[2]

On April 28, 1995, petitioners filed with the Arbitration Branch of the NLRC, a complaint for illegal dismissal, illegal deduction, separation pay, non-payment of 13th month pay, and salary differentials. Only petitioner Nas asked for payment of salary differentials as she alleged that she was paid a daily wage of P25.00 throughout her period of employment. The petitioners also sought the refund of the P1.00 that the respondent company collected from each of them daily as salary of the sweeper of the barber shop.

Private respondent in its position paper averred that the petitioners were joint venture partners and were receiving fifty percent commission of the amount charged to customers. Thus, there was no employer-employee relationship between them and petitioners. And assuming arguendo, that there was an employer-employee relationship, still petitioners are not entitled to separation pay because the cessation of operations of the barber shop was due to

serious business losses.

Respondent Trinidad Lao Ong, President of respondent Lao Enteng Co. Inc., specifically stated in her affidavit dated September 06, 1995 that Lao Enteng Company, Inc. did not take over the management of the New Look Barber Shop, that after the death Lao Enteng petitioner were verbally informed time and again that the partnership may fold up anytime because nobody in the family had the time to be at the barber shop to look after their interest; that New Look Barber Shop had always been a joint venture partnership and the operation and management of the barber shop was left entirely to petitioners; that her father's contribution to the joint venture included the place of business, payment for utilities including electricity, water, etc. while petitioners as industrial partners, supplied the labor; and that the barber shop was allowed to remain open up to April 1995 by the children because they wanted to give the partners a chance at making it work. Eventually, they were forced to close the barber shop because they continued to lose money while petitioners earned from it. Trinidad also added that private respondents had no control over petitioners who were free to come and go as they wished. Admittedly too by petitioners they received fifty percent to sixty percent of the gross paid by customers. Trinidad explained that some of the petitioners were allowed to register with the Social Security System as employees of Lao Enteng Company, Inc. only as an act of accommodation. All the SSS contributions were made by petitioners. Moreover, Osias Corporal, Elpidio Lacap and Teresita Flores were not among those registered with the Social Security System. Lastly, Trinidad avers that without any employee-employer relationship petitioners claim for 13th month pay and separation pay have no basis in fact and in law.[3]

In a Decision dated September 28, 1995, Labor Arbiter Potenciano S. Cañizares, Jr. ordered the dismissal of the complaint on the basis of his findings that the complainants and the respondents were engaged in a joint venture and that there existed no employer-employee relation between them. The Labor Arbiter also found that the barber shop was closed due to serious business losses or financial reverses and consequently declared that the law does not compel the establishment to pay separation pay to whoever were its employees.[4]

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

Indeed, complainants failed to show the existence of employer-employee relationship under the fourway test established by the Supreme Court. It is a common practice in the Barber Shop industry that barbers supply their own scissors and razors and they split their earnings with the owner of the barber shop. The only capital of the owner is the place of work whereas the barbers provide the skill and expertise in servicing customers. The only control exercised by the owner of the barber shop is to ascertain the number of customers serviced by the barber in order to determine the sharing of profits. The barbers maybe characterized as independent contractors because they are under the control of the barber shop owner only with respect to the result of the work, but not with respect to the details or manner of performance. The barbers are engaged in an independent calling requiring special skills available to the public at large.[5]

Its motion for reconsideration denied in the Resolution[6] dated March 5, 1997, petitioners filed the instant petition assigning that the NLRC committed grave abuse of discretion in:

- ARBITRARILY DISREGARDING SUBSTANTIAL EVIDENCE PROVING THAT PETITIONERS WERE EMPLOYEES OF RESPONDENT COMPANY IN RULING THAT PETITIONERS WERE INDEPENDENT CONTRACTORS.
- NOT HOLDING THAT PETITIONERS WERE ILLEGALLY DISMISSED AND IN NOT AWARDING THEIR MONEY CLAIMS.[7]

Petitioners principally argue that public respondent NLRC gravely erred in declaring that the petitioners were

independent contractors. They contend that they were employees of the respondent company and cannot be considered as independent contractors because they did not carry on an independent business. They did not cut hair, manicure, and do their work in their own manner and method. They insist they were not free from the control and direction of private respondents in all matters, and their services were engaged by the respondent company to attend to its customers in its barber shop. Petitioners also stated that, individually or collectively, they do not have substantial capital nor investments in tools, equipments, work premises and other materials necessary in the conduct of the barber shop. What the barbers owned were merely combs, scissors, and razors, while the manicurists owned only nail cutters, nail polishes, nippers and cuticle removers. By no standard can these be considered "substantial capital" necessary to operate a barbers shop.

Finally, petitioners fault the NLRC for arbitrarily disregarding substantial evidence on record showing that petitioners Pedro Tolentino, Manuel Caparas, Simplicio Pedelos, and Patricia Nas were registered with the Social Security System as regular employees of the respondent company. The SSS employment records in common show that the employer's ID No. of Vicente Lao/Barber and Pawn Shop was 03-0606200-1 and that of the respondent company was 03-8740074-7. All the foregoing entries in the SSS employment records were painstakingly detailed by the petitioners in their position paper and in their memorandum appeal but were arbitrarily ignored first by the Labor Arbiter and then by the respondent NLRC which did not even mention said employment records in its questioned decision.

We found petition is impressed with merit.

In our view, this case is an exception to the general rule that findings of facts of the NLRC are to be accorded respect and finality on appeal. We have long settled that this Court will not uphold erroneous conclusions unsupported by substantial evidence.[8] We must also stress that where the findings of the NLRC contradict those of the labor arbiter, the Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[9]

The issues raised by petitioners boil down to whether or not an employer-employee relationship existed between petitioners and private respondent Lao Enteng Company, Inc. The Labor Arbiter has concluded that the petitioners and respondent company were engaged in a joint venture. The NLRC concluded that the petitioners were independent contractors.

The Labor Arbiter's findings that the parties were engaged in a joint venture is unsupported by any documentary evidence. It should be noted that aside from the self-serving affidavit of Trinidad Lao Ong, there were no other evidentiary documents, nor written partnership agreements presented. We have ruled that even the sharing of proceeds for every job of petitioners in the barber shop does not mean they were not employees of the respondent company.[10]

Petitioner aver that NLRC was wrong when it concluded that petitioners were independent contractors simply because they supplied their own working implements, shared in the earnings of the barber shop with the owner and chose the manner of performing their work. They stressed that as far as the result of their work was concerned the barber shop owner controlled them.

An independent contractor is one who undertakes "job contracting", i.e., a person who (a) carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof, and (b) has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of the business.[11]

Juxtaposing this provision vis-à-vis the facts of this case, we are convinced that petitioners are not "independent contractors". They did not carry on an independent business. Neither did they undertake cutting hair and manicuring nails, on their own as their responsibility, and in their own manner and method. The services of the petitioners were engaged by the respondent company to attend to the needs of its customers in its barber shop. More importantly, the petitioners, individually or collectively, did not have a substantial capital or investment in the form of tools, equipment, work premises and other materials which are necessary in the conduct of the business of the respondent company. What the petitioners owned were only combs, scissors, razors, nail cutters, nail polishes, the nippers - nothing else. By no standard can these be considered substantial capital necessary to operate a barber shop. From the records, it can be gleaned that petitioners were not given work assignments in any place other than at the work premises of the New Look Barber Shop owned by the respondent company. Also, petitioners were required to observe rules and regulations of the respondent company pertaining, among other things, observance of daily attendance, job performance, and regularity of job output. The nature of work performed by were clearly directly related to private respondent's business of operating barber shops. Respondent company did not dispute that it owned and operated three (3) barber shops. Hence, petitioners were not independent contractors.

Did an employee-employer relationship exist between petitioners and private respondent? The following elements must be present for an employer-employee relationship to exist: (1) the selection and engagement of the workers; (2) power of dismissal; (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. Records of the case show that the late Vicente Lao engaged the services of the petitioners to work as barbers and manicurists in the New Look Barber Shop, then a single proprietorship owned by him; that in January 1982, his children organized a corporation which they registered with the Securities and Exchange Commission as Lao Enteng Company, Inc.; that upon its incorporation, it took over the assets, equipment, and properties of the New Look Barber Shop and continued the business; that the respondent company retained the services of all the petitioners and continuously paid their wages. Clearly, all three elements exist in petitioners' and private respondent's working arrangements.

Private respondent claims it had no control over petitioners. The power to control refers to the existence of the power and not necessarily to the actual exercise thereof, nor is it essential for the employer to actually supervise the performance of duties of the employee. It is enough that the employer has the right to wield that power.[12] As to the "control test", the following facts indubitably reveal that respondent company wielded control over the work performance of petitioners, in that: (1) they worked in the barber shop owned and operated by the respondents; (2) they were required to report daily and observe definite hours of work; (3) they were not free to accept other employment elsewhere but devoted their full time working in the New Look Barber Shop for all the fifteen (15) years they have worked until April 15, 1995; (4) that some have worked with respondents as early as in the 1960's; (5) that petitioner Patricia Nas was instructed by the respondents to watch the other six (6) petitioners in their daily task. Certainly, respondent company was clothed with the power to dismiss any or all of them for just and valid cause. Petitioners were unarguably performing work necessary and desirable in the business of the respondent company.

While it is no longer true that membership to SSS is predicated on the existence of an employee-employer relationship since the policy is now to encourage even the self-employed dressmakers, manicurists and jeepney drivers to become SSS members, we could not agree with private respondents that petitioners were registered with the Social Security System as their employees only as an accommodation. As we have earlier mentioned private respondent showed no proof to their claim that petitioners were the ones who solely paid all SSS contributions. It is unlikely that respondents would report certain persons as their workers, pay their SSS premium as well as their wages if it were not true that they were indeed their employees.[13]

Finally, we agree with the labor arbiter that there was sufficient evidence that the barber shop was closed due to serious business losses and respondent company closed its barber shop because the building where the barber shop was located was sold. An employer may adopt policies or changes or adjustments in its operations to insure profit to itself or protect investment of its stockholders. In the exercise of such management prerogative, the employer may merge or consolidate its business with another, or sell or dispose all or substantially all of its assets and properties which may bring about the dismissal or termination of its employees in the process.[14]

Prescinding from the above, we hold that the seven petitioners are employees of the private respondent company; as such, they are to be accorded the benefits provided under the Labor Code, specifically Article 283 which mandates the grant of separation pay in case of closure or cessation of employer's business which is equivalent to one (1) month pay for every year of service.[15] Likewise, they are entitled to the protection of minimum wage statutes. Hence, the separation pay due them may be computed on the basis of the minimum wage prevailing at the time their services were terminated by the respondent company. The same is true with respect to the 13th month pay. The Revised Guidelines on the Implementation of the 13th Month Pay Law states that "all rank and file employees are now entitled to a 13th month pay regardless of the amount of basic salary that they receive in a month. Such employees are entitled to the benefit regardless of their designation or employment status, and irrespective of the method by which their wages are paid, provided that they have worked for at least one (1) month during a calendar year" and so all the seven (7) petitioners who were not paid their 13th month pay must be paid accordingly.[16]

Anent the other claims of the petitioners, such as the P10,000.00 as penalty for non-compliance with procedural process; P10,000.00 as moral damages; refund of P1.00 per day paid to the sweeper; salary differentials for petitioner Nas; attorney's fees), we find them without basis.

IN VIEW WHEREOF, the petition is GRANTED. The public respondent's Decision dated October 17, 1996 and Resolution dated March 05, 1997 are SET ASIDE. Private respondents are hereby ordered to pay, severally and jointly, the seven (7) petitioners their (1) 13th month pay and (2) separation pay equivalent to one month pay for every year of service, to be computed at the then prevailing minimum wage at the time of their actual termination which was April 15, 1995.

Costs against private respondents.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Per Commissioner Alberto R. Quimpo and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Vicente S E. Veloso.

[2] Rollo, pp. 5-7.

[3] Rollo, pp. 115-119.

[4] Id. at 84-85.

[5] Id. at 122.

[6] Id. at 128-130.

[7] Id. at 11.

[8] Anino vs. NLRC, 290 SCRA 489, 499-500 (1998).

[9] Paz Martin Jo vs. NLRC, G.R. No. 121605, February 02, 2000, p. 7.

[10] Labor Congress of the Philippines vs. NLRC, 290 SCRA 509, 528 (1998); San Miguel Jeepney Service vs. NLRC, 265 SCRA 35 (1998).

[11] Section 8, Rule VIII, Book III, of the Omnibus Rules Implementing the Labor Code; Ponce vs. NLRC, 293 SCRA 366, 374-375 (1998).

[12] Paz Martin Jo and Cesar Jo vs. NLRC, G.R. No. 121605, February 02, 2000, p. 5.

[13] Nagusara vs. NLRC, 290 SCRA 245, 251 (1998).

[14] Associated Labor Unions-VIMCONTU vs. NLRC, 204 SCRA 913, 923 (1991).

[15] Phil. Tobacco Flue-Curing & Redrying Corp. vs. NLRC, 300 SCRA 37, 55 (1998)

[16] See Sec. 1, P.D. 851; Osias Academy vs. DOLE, 192 SCRA 612, 619 (1990); Dentech Mfg. Corp. vs. NLRC, 172 SCRA 588 (1989).

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