SAMEER OVERSEAS PLACEMENT AGENCY, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION, Q.C. AND PRISCILA ENDOZO, RESPONDENTS.

G.R. No. 132564. October 20, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is a special civil action for certiorari with application for a temporary restraining order seeking to set aside the resolution of the National Labor Relations Commission affirming in toto the decision of Labor Arbiter Andres C. Zaballa finding the termination of employment of respondent Priscila Endozo as domestic helper in Taiwan as unwarranted and ordering petitioner to pay her salary for the unexpired portion of her contract of employment of eleven (11) months and (19) nineteen days amounting to NT$151,996.60, plus ten percent (10%) thereof as attorney's fees.

The facts are as follows:

In June 1993, respondent Priscila Endozo applied to petitioner Sameer Overseas Employment Agency, a local recruitment placement agency, for overseas employment in Taiwan as a domestic helper. As she was initially found to have a "minimal spot" she was advised to rest for at least two (2) months.

On April 6, 1994, petitioner told respondent Endozo that she would be finally deployed to Taiwan and required her to pay the amount of P30,000.00, which she did, but petitioner did not issue any receipt.

On April 8, 1994, respondent Endozo left for Taiwan. She was to be employed as a housemaid of Sung Kui Mei with a monthly salary of NT$13,380.00 for a period of one year.

However, she stayed in Taiwan only for eleven (11) days as her employer terminated her services, and sent her home on April 19, 1994 for alleged incompetence.

Immediately upon her return, she confronted petitioner agency and Rose Mahinay of said agency told her that she was just unlucky and that she would be refunded the amount of P50,000.00.

On June 20, 1995, private respondent filed with the Philippine Overseas Employment Administration a complaint against petitioner for illegal dismissal, payment of salary corresponding to the unexpired portion of her contract, illegal exaction, violation of the Labor Code, falsification of contract of employment, attorney’s fees and costs.

Meantime, on June 7, 1995, Congress enacted Republic Act No. 8042, vesting jurisdiction over claims of overseas workers with the National Labor Relations Commission (hereafter NLRC). Consequently, respondent’s claim was transferred to the National Labor Relations Commission, Arbitration Branch, in San Pablo City.

After position papers were filed, on May 28, 1997, Labor Arbiter Andres C. Zavalla rendered a decision finding that private respondent was illegally dismissed and ordering petitioner to pay her salary corresponding to the unexpired portion of her contract of employment of eleven (11) months and nineteen (19) days equivalent to

NT$151,996.80, plus ten percent (10%) of the award equivalent to NT$15,199.68 as attorney's fees.[1]

In time, petitioner appealed the decision to the National Labor Relations Commission, Third Division, Quezon City.

On November 28, 1997, the NLRC rendered decision affirming in toto the decision of the Labor Arbiter.[2]

On December 23, 1997, petitioner filed with the NLRC a motion for reconsideration;[3] however, on January 28, 1998, the NLRC denied the motion.[4]

Hence, this recourse.[5]

On May 14, 1998, we required respondents to comment on the petition within ten (10) days from notice.[6] On July 13, 1998, the Solicitor General filed his comment, submitting the proposition that private respondent had been illegally dismissed by her foreign employer entitling her to payment of her salaries corresponding to the unexpired portion of her contract.[7] However, private respondent failed to submit her comment, and on February 1, 1999, we required her counsel to show cause why she should not be disciplinarily dealt with or held in contempt for such failure.[8]

We now resolve to give due course to the petition. We consider private respondent to have waived the filing of her comment and set aside the resolution of February 1, 1999.

The issue presented is whether the employer in Taiwan could lawfully terminate private respondent's employment as domestic helper for incompetence during the probationary period of her employment.

Petitioner recruited private respondent for employment in Taiwan, and she executed a contract of employment with her Taiwanese employer under which she was to serve as domestic helper for a period of one year, with six months probationary period. After only eleven days of work, the Taiwanese employer terminated private respondent's employment for alleged incompetence.

It is an elementary rule in the law on labor relations that even a probationary employee is entitled to security of tenure.[9] A probationary employee can not be terminated, except for cause.[10]

In this case, the employment contract was for a definite period of one (1) year, with six (6) months probationary period. After only eleven days of work, the employer dismissed private respondent without just cause.

“Under Article 281 of the Labor Code, a probationary employee may be terminated on two grounds: (a) for just cause or (b) when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement.”[11] Under the contract of employment, the employer may terminate the services of private respondent during the probationary period for "being found losing ability to work." However, “the power of the employer to terminate a probationary employment contract is subject to limitations. First, it must be exercised in accordance with the specific requirements of the contract. Secondly, the dissatisfaction of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and thirdly, there must be no unlawful discrimination in the dismissal.”[12] In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer.[13] In this case, petitioner was not able to present convincing proof establishing respondent Endozo’s alleged incompetence. “Due process dictates that an employee be apprised beforehand of the conditions of his employment and of the terms of advancement therein.”[14] “Precisely, implicit in Article 281 of the Code is the requirement that reasonable standards be previously made known by the employer to the probationary employee at the time of his engagement.”[15] Thus, the termination of respondent Endozo’s employment was not justified[16] and hence, illegal.[17] Consequently, private respondent is entitled to payment of her salaries corresponding to the unexpired

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portion of her contract of employment for a period of one year.[18]

WHEREFORE, the Court hereby DISMISSES the petition and AFFIRMS the resolution of the National Labor Relations Commission adopted on November 28, 1997, in NLRC NCR CA No. 013114-97.

No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), and Puno, JJ., concur.

Kapunan, and Ynares-Santiago, JJ., on official business abroad.

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[1] Rollo, pp. 39-44.

[2] Rollo, pp. 33-37.

[3] Rollo, pp. 27-31.

[4] Rollo, pp. 25-26.

[5] Petition, Rollo, pp. 11-23.

[6] Rollo, p. 66.

[7] Rollo, pp. 71-82.

[8] Rollo, p. 84.

[9] Philippine Manpower Services, Inc. vs. NLRC, 224 SCRA 691 [1993].

[10] Agoy vs. NLRC, 252 SCRA 588 [1996] ; Lopez vs. NLRC, 245 SCRA 644 [1995] ; Pines City Educational Center vs. NLRC, 227 SCRA 655[1993]; Phil. Federation of Credit Cooperative, Inc. (PFCCI) vs. NLRC (First Division), G.R. No. 121071, December 11, 1998.

[11] Philippine Manpower Services, Inc. vs. NLRC, supra, on p. 700; Orient Express Placement Philippines vs. NLRC, 273 SCRA 256, 259 [1997].

[12] Manila Hotel Corporation vs. NLRC, 141 SCRA 169,176[1986].

[13] Lopez vs. NLRC, 297 SCRA 508, 516[1998], citing General Baptist Bible College vs. NLRC, 219 SCRA 549, 555[1993]; Philippine Manpower Services, Inc. vs. NLRC, supra, on pp. 698-699.

[14] Orient Express Placement Philippines vs. NLRC, supra, on p. 257.

[15] Ibid., on p. 260.

[16] Lopez vs. NLRC, supra, citing General Baptist Bible College vs. NLRC, supra.

[17] Lopez vs. NLRC, supra, on p. 516; Philippine Manpower Services, Inc. vs. NLRC, supra, on p. 699.

[18] Anderson vs. NLRC, 252 SCRA 116, 126 [1996]; Teknika Skills and Trade Services, Inc. vs. NLRC, 212 SCRA 132 [1993].

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