

**PRISCO LANZADERAS, SAMUEL SADICON, ANGELO MABANTA,
VICENTE GIBERSON, LONGINO NAMBATAC, ELENO ACERON, AND
SALVADOR VIRTUDAZO, PETITIONERS, VS. AMETHYST SECURITY
AND GENERAL SERVI...**

G.R. No. 143604. June 20, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the resolutions dated January 05, 2000[1] and May 19, 2000,[2] of the Court of Appeals in CA-G.R. SP No. 56347. Said resolutions had dismissed the petition under Rule 43 of the 1997 Rules of Civil Procedure, earlier filed by petitioners in the appellate court to challenge the resolution dated March 19, 1999[3] of the National Labor Relations Commission in NLRC CA No. M-004619-98.

Petitioners were the complainants in RAB CASES NO. 10-03-00233-98, 10-03-00234-98, and 10-04-00254-98. These were consolidated cases for alleged illegal dismissal with money claims against sister companies Resin Industrial Chemical Corp., (RICC) and Philippine Iron Construction and Marine Works, Inc., (PICMW) and their security services provider, Amethyst Security and General Services Inc. (formerly Calmar Security Agency). The Labor Arbiter in a decision[4] dated November 27, 1998 found in favor of complainants (herein petitioners). Respondents herein filed their appeal with the NLRC. And the NLRC in a resolution[5] dated March 19, 1999 reversed and set aside the ruling of the Labor Arbiter. Then in a resolution[6] dated October 29, 1999, the NLRC denied herein petitioners' motion for reconsideration.

The factual antecedents of the instant petition, as culled from the records of the case, are as follows:

Respondent RICC is engaged in the manufacture of industrial glue at Nahalanan, Jasaan, Misamis Oriental. It leased a portion of its compound to its sister company, PICMW, which operated a shipbuilding and repair facility. To secure their properties and personnel, RICC and PICMW entered into separate service contracts for detailing of security guards with respondent Amethyst Security. Amethyst had been RICC/PICMW's security contractor since 1968.

One of the conditions of the service contracts between Amethyst and RICC/PICMW was for Amethyst to supply the latter companies with security guards who must be between 25 to 45 years of age. The aforesaid condition was maintained with every renewal of the service contracts.[7] Per payrolls submitted by Amethyst, the petitioners who signed therein were paid the minimum wage and benefits provided for by law, to wit: regular wage, nightshift differentials, 5-day incentive leave pay, cost of living allowance, overtime pay, and holiday pay.[8]

When RICC/PICMW renewed their service contract with Amethyst in January 1998, respondent RICC in a letter dated January 15, 1998, reminded Amethyst of their stipulated age limit for the latter's guards detailed at the RICC/PICMW compound.[9] This prompted respondent Amethyst to issue an order on January 23, 1998, directing all security guards to submit copies of their respective Birth Certificates. On January 30, 1998,

petitioners who were at that time over 45 years of age received Memorandum/Relief Orders[10] relieving them from their existing postings as security guards of Amethyst with RICC/PICMW, effective February 1, 1998. Petitioners were instructed to report to the main office of Amethyst for reassignment. The order further stated that the failure of petitioners to comply with the directive would be construed as a manifestation of their lack of interest to continue working as security personnel and Amethyst would consider them absent without official leave (AWOL).[11]

On April 21, 1998, Amethyst issued a Detail Order informing petitioners that it had been able to renegotiate their assignments with RICC/PICMW. They were ordered to report to one Jose Pitas, Detachment Head of RICC/PICMW for their new assignment as firewatch guards. Petitioners were again warned that failure to report to Pitas on May 1, 1998, would mean that they were no longer interested in working as security guards and would be considered AWOL.[12] According to respondent Amethyst, it gave petitioners the option to either continue working for PICMW as firewatchers or be transferred to Cagayan de Oro for new assignments. The respondents alleged that the petitioners chose neither option but instead failed to report for work on February 1, 1998. Thereafter, petitioners filed on March 23, 1998 and April 2, 1998, their separate complaints for illegal dismissal.[13]

On November 27, 1998, the Labor Arbiter ruled that the petitioners had been constructively dismissed from their employment. He stated that the change of assignments from security guards to firewatch guards was tantamount to a demotion, as the latter posting was of a lower category with corresponding diminution in pay. He also opined that although no employer-employee relationship existed between petitioners and respondents RICC/PICMW, the latter were considered indirect employers of petitioners, and thus, solidarily liable with respondent security agency pursuant to Article 107[14] of the Labor Code.[15] The decretal portion of the Labor Arbiter's decision reads:

WHEREFORE, judgment is hereby rendered:

- declaring complainants Prisco Lanzaderas, Samuel Sadicon, Angelo Mabanta, Eleno Acheron, Vicente Giberson, Longino Mambatac, and Salvador Virtudazo, illegally dismissed from their respective jobs;
- directing respondents Amethyst Security and General Services, Inc., (Formerly Calmar Security Agency), Philippine Iron Construction and Marine Works, Inc. (PICMW) and Resin Industrial Chemical Corporation, to pay the above named complainants jointly and severally, the total sum of One Million Two Hundred Fifty One Thousand Six Hundred Sixty Four Pesos and 41/100 (P1,251,664.41) representing complainants total awarded monetary benefits.

Complainants' other claims are dismissed for lack of merit.

SO ORDERED.[16]

The respondents appealed to the NLRC alleging grave abuse of discretion on the part of the Labor Arbiter. The NLRC reversed and set aside the decision of the Labor Arbiter on the ground that the relief of the petitioners from their posts was a legitimate exercise of business prerogative by RICC/PICMW. According to the NLRC, such exercise cannot be challenged for being malicious, capricious, or illegal. The NLRC resolution limited the monetary award to petitioners for salary differential, thus:

WHEREFORE, premises considered, the decision appealed from is hereby REVERSED and SET ASIDE. Respondents are hereby ordered to pay jointly and severally complainants' salary differential for the period from December 18, 1997 to January 31, 1998 as follows:

Prisco Lanzaderas

-

P 289.86

Samuel Sedicon

-

289.86

Angelo Mabanta

-

289.86

Vicente Giberson

-

366.24

Longino Mambatac

-

366.24

Salvador Virtudazo

-

366.24

Eleno Acheron

-

366.24

P2,334.54

SO ORDERED.[17]

The petitioners moved for reconsideration, but this was denied by the NLRC in its resolution dated October 29, 1999. The NLRC pointed out that the grounds for reconsideration raised by the petitioners involved the very issues already passed upon on appeal.

The petitioners elevated the matter to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure, as CA-G.R. SP No. 56347.

In a resolution dated January 5, 2000, the Court of Appeals dismissed the petition outright for the following reasons:

- Error in the choice of remedy. In *St. Martin Funeral Home vs. NLRC and Bienvenido Aricayos*, G.R. No. 130866, September 16, 1998, the Supreme Court ruled that all references in the amended Sec. 9 of B.P. No. 129 to suppose(d) appeals from the NLRC to the Supreme Court must be interpreted and hereby declared to mean and refer to petitions for certiorari under Rule 65 and all such petitions should be initially filed with the Court of Appeals as the appropriate forum for the relief desired. In the instant case, petitioners assigned four (4) alleged errors allegedly committed by the 5th Division of the NLRC (p. 7 of Petition). Nowhere is there an allegation or claim in the petition as required by Rule 65 that the respondent NLRC had acted without or in excess of its 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.

- Failure to state the material dates showing that the petition was filed on time, including the date when the motion for reconsideration was filed. As it is, there is no way to determine the period of interruption and the remaining period within which to file the petition in accordance with Section 4 Rule 65, as amended by Supreme Court Circular No. 39-98 on Bar Matter No. 803 which took effect on September 1, 1998. This if We liberally consider the present petition as one for certiorari, which [it] is not.

3. There is non-submission, as accompanying documents to support the petition, the motion for reconsideration filed and copies of all pleadings and documents relevant and pertinent thereto as required by the Rules. [Emphasis supplied]

SO ORDERED.[18]

Petitioners moved for reconsideration, but on May 19, 2000, it was denied in this wise:

...[T]he Court Resolved to DENY the aforesaid motion for reconsideration, as the decision or final resolution or order of the National Labor Relations Commission is not a proper subject of appeal to this Court except by petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. Thus, Rule 43 does not apply to judgments or final orders of the NLRC and may only be brought to this Court under Rule 65. Nor can the petition at bench be treated as a petition for certiorari under the most liberal policy since it does not comply with the requirements specified in said Rule 65. To rule otherwise would render Section 5 (f), Rule 56, 1997 Rules of Civil Procedure, inutile. [Emphasis supplied]

SO ORDERED. [19]

Hence this petition for review, which raises the following issues for our resolution:

- WHETHER OR NOT THE PETITION FOR REVIEW CAN BE TREATED AS A PETITION FOR CERTIORARI UNDER RULE 65 TO ENABLE THE PETITIONERS TO OBTAIN A FAIR, EXPEDITIOUS AND REASONABLE DETERMINATION OF THEIR RIGHTS INSTEAD OF SUBJECTING THEM TO RIGID AND TECHNICAL RULE ON APPEAL OF THE RULES OF COURT.

- WHETHER OR NOT THE PETITION FOR REVIEW OF THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION FILED WITH THE COURT OF APPEALS INSTEAD OF PETITION FOR CERTIORARI UNDER RULE 65 CAN BE AMENDED WITHIN A PERIOD OF SIXTY (60) DAYS TO CONFORM TO PETITION FOR CERTIORARI UNDER RULE 65 AS REQUIRED IN THE ST. MARTIN FUNERAL HOMES CASE.

- WHETHER OR NOT THE DISMISSAL OF THE PETITION FOR REVIEW BY THE HONORABLE COURT AND THE DENIAL OF THE MOTION FOR RECONSIDERATION PURELY ON TECHNICALITIES CONFORMS TO THE LIBERAL POSTURE ADOPTED BY THE HONORABLE SUPREME COURT IN A LONG LINE OF CASES TO DISREGARD TECHNICALITIES SO THAT CASES MAY BE DECIDED ON THE MERITS.

- WHETHER OR NOT THE TERMINATION OF PETITIONERS' SERVICES BY THE RESPONDENTS

BY VIRTUE OF THE CONTRACT OF SECURITY SERVICES AND THE SUBSEQUENT ASSIGNMENT
AS FIREWATCH AT PICMW CONSTITUTES CONSTRUCTIVE DISMISSAL.[20]

Simply stated, the issues in this petition now are (1) whether the Court of Appeals erred in dismissing the petition filed under Rule 43 of the Rules of Court for being the wrong mode of appeal pursuant to the provision of Sec. 5 (f)[21] of Rule 56 of the Revised Rules of Court, and (2) whether petitioners were constructively dismissed, thus, entitling them to their claims and other monetary benefits.

On the first issue, it appears that there was a serious procedural lapse when petitioners filed an appeal with the Court of Appeals. Section 2 of Rule 43 of the 1997 Rules of Civil Procedure[22] expressly provides that it shall not apply to judgments or final orders issued under the Labor Code of the Philippines. A cursory look at Rule 43 could have averted this lapse. To our mind, an appeal from a decision of the NLRC to the Court of Appeals may be done only by way of special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. Having opted for the wrong mode, petitioners' appeal was properly denied.

Petitioners now urge this Court to ignore technicalities and brush aside the procedural requirements so this case may be decided "on the merits." Although technical rules of procedure are not ends in themselves, they are necessary, however, for an effective and expeditious administration of justice. It is settled that a party who seeks to avail of certiorari must observe the rules thereon and non-observance of said rules may not be brushed aside as "mere technicality." [23] While litigation is not a game of technicalities, and that the rules of procedure should not be enforced strictly at the cost of substantial justice, still it does not follow that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation, assessment and just resolution of the issues.[24] Procedural rules should not be belittled or dismissed simply because they may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for compelling reasons.[25]

On the postulate that dismissal of appeals based on mere technicalities[26] is frowned upon, petitioners would have us treat their petition filed under Rule 43 as having been filed under Rule 65, or otherwise allow them to amend their petition to conform to said rule. They invoke the case of *Tuazon v. Court of Appeals*[27] where a special civil action for certiorari was filed with the Court of Appeals under Rule 65 when it should have been filed as a petition for review.

In *Tuazon*, we ruled that the allegation "lack of jurisdiction and grave abuse of discretion amounting to lack of jurisdiction, and there is no other plain, speedy or adequate remedy" in the petition filed with the Court of Appeals to be mere surplusage. Thus, it could not detract from a consideration of the petition as one for review under Section 22[28] of the Judiciary Reorganization Act of 1980, Section 22 (b) of the Interim Rules and Circular 2-90.[29] The petition filed in *Tuazon* complied with the requirements of a petition for review, albeit captioned as one for certiorari, but with the cited surplusage. *Tuazon* clearly shows the Court looks beyond the form and considers substance as circumstances warrant.

Resort to judicial review of the decisions of the NLRC, a quasi-judicial body, under Rule 65 of the Rules of Court is confined only to issues of want or excess of jurisdiction and grave abuse of discretion resulting thereto, on the part of the tribunal rendering them.[30] In the instant case, the petitioners a quo failed to allege before the appellate court "grave abuse of discretion resulting thereto," thus amounting to lack or excess of jurisdiction on the part of the NLRC. That failure was fatal to the petitioners' cause. Their appeal was properly denied, hence their present petition lacks merit, and ought to be likewise denied.

Moreover, on the second issue, which we now consider only for the purpose of resolving this matter completely, petitioners aver that the age requirement for posting of guards at RICC/PICMW was a new provision in the service contract. This averment is inaccurate. Admittedly, the security services contract between Amethyst

(formerly Calmar) Security Agency and RICC/PICMW had continuously been renewed since 1968 and featured the particular provision on the age limit (not exceeding 45 years) of the security guards with each renewal.[31] Petitioners could not claim ignorance of the said provision. They could not claim to have been caught by surprise when Amethyst relieved them from their posting at RICC/PICMW due to their failure to meet the stipulated age limits. Petitioners acted in bad faith when they tried to mislead Amethyst as to their respective actual age.

Lastly, petitioners' claims of constructive dismissal could not be sustained. Their averments fall short of what this Court considers as constructive dismissal. Petitioners could not fairly claim involuntary resignation on the ground that their continued employment was rendered impossible, unreasonable or unlikely.[32] Neither could they show persuasively that their transfer or assignment from security guards to firewatch guards involved diminution in pay or demotion in rank. Nor was there a clear showing of an act of clear discrimination, insensibility or disdain by their employer — Amethyst — that made their employment so unbearable that it could foreclose any option by them except to forego their continued employment.[33]

The condition imposed by respondent RICC/PICMW, as a principal or client of the contractor Amethyst, regarding the age requirement of the security guards to be designated in its compound, is a valid contractual stipulation. It is an inherent right of RICC/PICMW, as the principal or client, to specify the qualifications of the guards who shall render service pursuant to a service contract. It stands to reason that in a service contract, the client may require from the service contractor that the personnel assigned to the client should meet certain standards and possess certain qualifications, conformably to the client's needs.

Security of tenure, although provided in the Constitution,[34] does not give an employee an absolute vested right in a position as would deprive the company of its prerogative to change their assignment or transfer them where they will be most useful. When a transfer is not unreasonable, nor inconvenient, nor prejudicial to an employee; and it does not involve a demotion in rank or diminution of his pay, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.[35]

Case law recognizes the employer's right to transfer or assign employees from one area of operation to another,[36] or one office to another or in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits and other privileges and not motivated by discrimination or made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[37] This matter is a prerogative inherent in the employer's right to effectively control and manage the enterprise.[38]

We note that Amethyst gave petitioners an option as to their new deployment. They could stay on with RICC/PICMW as firewatch guards, pursuant to negotiated agreement between Amethyst and RICC/PICMW to accommodate the displaced security guards. Or they could be transferred to another locality, Cagayan de Oro City, but in the same role as security guards. Petitioners, however, refused to report to Amethyst headquarters, despite knowledge that they were being called to receive instructions regarding new deployment. Petitioners' action not to report for work is a form of defiant action that petitioners failed to justify. Even if it could be argued that their collective action stemmed from their resentment against the age rule being enforced by Amethyst, we find nothing in the circumstances of this case to show sufficient reason to excuse petitioners' failure to heed management's exercise of a management prerogative.

Thus, we agree with respondents that there is no reason to hold Amethyst liable for violations claimed by petitioners. It follows also that we find no ground to hold co-respondents RICC/PICMW liable, except for salary differential ordered in the NLRC decision. The only time the indirect employer may be made solidarily liable with the contractor is when the contractor fails to pay his employees their wages and other benefits claimed.

WHEREFORE, the petition is DENIED. The assailed resolutions of the Court of Appeals in CA-G.R. SP No. 56347 are AFFIRMED. As ordered in the NLRC decision dated November 27, 1998, respondents must pay jointly and severally petitioners' salary differential only for the period December 18, 1997 to January 31, 1998, as follows: P289.86 each to petitioners Prisco Lanzaderas, Samuel Sadicon, and Angelo Mabanta; and P366.24 each to petitioners Vicente Giberson, Longino Nambatac, Salvador Virtudazo, and Eleno Acheron. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), and Callejo, Sr., JJ., concur.

Austria-Martinez, J., on official leave.

[1] Rollo, pp. 34-35. Penned by Associate Justice Teodoro P. Regino, with Associate Justices Ruben T. Reyes and Eriberto U. Rosario, Jr., concurring.

[2] Id. at 36-37.

[3] Id. at 48-56.

[4] Id. at 38-47.

[5] Supra, note 3.

[6] Id. at 64-65.

[7] Id. at 207-210.

[8] Id. at 49.

[9] Id. at 254.

[10] Id. at 106.

[11] Ibid.

[12] Id. at 107, Annex "F."

[13] Id. at 51.

[14] ART. 107. Indirect Employer. — The provisions of the immediately preceding the Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

[15] Rollo, p. 42.

[16] Id. at 46-47.

[17] Id. at 55-56.

[18] Id. at 34-35.

[19] Id. at 36-37.

[20] Id. at 13.

[21] SEC. 5. Grounds for dismissal of appeal. — The appeal may be dismissed motu proprio or on motion of the respondent on the following grounds:

....

(f) Error in the choice or mode of appeal;

....

[22] SEC. 2. Cases not covered.—This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines.

[23] *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, G.R. No. 138270, 28 June 2001, 360 SCRA 173, 181, citing *Manila Midtown Hotels & Land Corp. v. NLRC*, 351 Phil. 500, 506 (1998).

[24] *Ibid*, citing *Limpot v. Court of Appeals*, G.R. No. 44642, 20 February 1989, 170 SCRA 367, 377.

[25] *Ibid*, citing *Gesmundo v. JRB Realty Corporation*, G.R. No. 111077, 14 July 1994, 234 SCRA 153, 160; *Galang v. Court of Appeals*, G.R. No. 76221, 29 July 1991, 199 SCRA 683, 689.

[26] *Modern Fishing Gear Labor Union v. Noriel*, No. L-53907, 6 May 1988, 161 SCRA 106.

[27] G.R. No. 109012, 8 July 1994, 234 SCRA 24, 27.

[28] SEC. 22. Appellate Jurisdiction. — Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdiction. Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Courts. The decision of the Regional Trial Courts in such cases shall be appealable by petition for review to the Court of Appeals which may give it due course only when the petition shows prima facie that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed.

[29] CIRCULAR NO. 2-90: GUIDELINES TO BE OBSERVED IN APPEALS TO THE COURT OF APPEALS AND TO THE SUPREME COURT.

....

3. Appeals to the Court of Appeals. — On the other hand, appeals by certiorari will not lie with the Court of Appeals. Appeals to that Court from Regional Trial Courts may be taken:

....

b) by petition for review- where the judgment was rendered by the regional trial court in the exercise of its appellate jurisdiction.

The mode of appeal in either instance is entirely distinct from an appeal by certiorari to the Supreme Court.

[30] *Quebec, Sr. v. National Labor Relations Commission*, G.R. No. 123184, 22 January 1999, 301 SCRA 627, 632.

[31] See *Rollo*, p. 209.

[32] *Dismissal As a Means of Terminating Employment*, 20 June 2000, 334 SCRA 83, 93-94, citing *Escobin v. NLRC*, 351 Phil. 973, 999 (1998).

[33] *Ibid*, citing *Philippine Advertising Counselors, Inc. v. NLRC*, 331 Phil 694, 702 (1996); *Megascop General*

Services v. NLRC, 340 Phil. 274, 285 (1997).

[34] CONST., Art. XIII, Sec. 3.

[35] Phil. Telegraph and Telephone Corp. v. Laplana, G.R. No. 76645, 23 July 1991, 199 SCRA 485, 492.

[36] Tan v. NLRC, 359 Phil. 499, 513 (1998).

[37] Supra, note 35 at 491.

[38] Escobin v. NLRC, 351 Phil. 973, 998 (1998).

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