

SAN MIGUEL CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND RAFAEL MALIKS RESPONDENTS.

G.R. NO. 147566. December 06, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner San Miguel Corporation (SMC) seeks the reversal and setting aside of the Decision[1] dated September 30, 1999 of the Court of Appeals (CA) in CA-G.R. SP No. 50321, as reiterated in its Resolution[2] of March 20, 2001, affirming in toto an earlier decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 005478-93, entitled "Rafael C. Maliksi v. San Miguel Corporation and/or Philippine Software Services & Education Center." The affirmed NLRC decision overturned that of the Labor Arbiter and declared the herein private respondent Rafael Maliksi (Maliksi) a regular employee of the petitioner and ordered the latter to reinstate him with benefits.

As found by the NLRC and subsequently adopted by the CA, the facts are as follows:

On 16 October 1990, Rafael M. Maliksi filed a complaint against the San Miguel Corporation-Magnolia Division, herein referred to as SMC and Philippine Software Services and Education Center herein referred to as PHILSSEC to compel the said respondents to recognize him as a regular employee. He amended the complaint on 12 November 1990 to include the charge of illegal dismissal because his services were terminated on 31 October 1990.

The complainant's employment record indicates that he rendered service with Lipercon Services from 1 April 1981 to February 1982 as budget head assigned to SMC-Beer Division, then from July 1983 to April 1985 with Skillpower, Inc., as accounting clerk assigned to SMC-Magnolia Division, then from October 1988 to 1989 also with Skillpower, Inc. as acting clerk assigned to SMC-Magnolia Finance, and from October 1989 to 31 October 1990 with PHILSSEC assigned to Magnolia Finance as accounting clerk. The complainant considered himself as an employee of SMC-Magnolia. Lipercon Services, Skillpower, Inc. and PHILSSEC are labor-only contractors and any one of which had never been his employer. His dismissal, according to him, was in retaliation for his filing of the complaint for regularization in service. His dismissal was illegal there being no just cause for the action. He was not accorded due process neither was his dismissal reported to the Department of Labor and Employment.

PHILSSEC disclaimed liability. As an entity catering (sic) computer systems and program for business enterprises, it has contracted with SMC-Magnolia to computerize the latter's manual accounting reporting systems of its provincial sales. PHILSSEC then conducted a three phase analysis of SMC-Magnolia set up: first the computer needs of the firm was (sic) determined; then, the development of computer systems or program suitable; and, finally, set up the systems and train the employees to operate the same. In all these phases, PHILSSEC uses its computer system and technology and provided the necessary manpower to compliment the transfer of the technology to SMC-Magnolia. Complainant Maliksi was one of those employed by PHILSSEC whose principal function was the manual control of data needed during the computerization. Like all assigned to the project, the complainant's work was controlled by PHILSSEC supervisors, his salary

paid by the agency and he reported directly to PHILSSEC. The computerization project was completed on 31 October 1990, and so, the complainant was terminated on the said date.

SMC, on the other hand, submitted its position. In the contract SMC entered with PHILSSEC, the latter undertook to set up the computerization of the provincial sales reporting system of Magnolia Division. To carry out the task, PHILSSEC utilized 3 computer programmers and the rest were data encoders. The complainant being one of the compliments (sic) performed the following functions:

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SMC likewise contends that PHILSSEC exercised exclusive managerial prerogative over the complainant as to hiring, payment of salary, dismissal and most importantly, the control over his work. SMC was interested only in the result of the work specified in the contract but not as to the means and methods of accomplishing the same. Moreover, PHILSSEC has substantial capital of its own. It has an IBM system, 3 computers, 17 IBM or IBM-compatible computers; it has a building where the computer training center and main office are located. What it markets to clients are computer programs and training systems on computer technology and not the usual labor or manpower supply to establishment concerns. Moreover, what PHILSSEC set up employing the complainant, among others, has no relation to the principal business of SMC, which is food and beverage. It was a single relationship between the people utilized by PHILSSEC and SMC...' [3]

The Labor Arbiter declared Maliksi a regular employee of PHILSSEC and absolved SMC from liability. Dispositively, the Labor Arbiter's decision reads:

WHEREFORE, the complainant, Rafael Maliksi, is recognized as a regular employee of Philippine Software Services and Education Center which respondent is ordered to reinstate him to a job of the same level as his previous position in any of the projects where there is a vacancy and without loss of seniority rights. A five months backwages is awarded because the prolonged suspension from his work was brought about by his refusal to take any job offered by PHILSSEC earlier in the proceedings of this case. The respondent, SMC-Magnolia Division, is exempted from any liability as the complaint against the said corporation is dismissed for lack of merit.

SO ORDERED.[4]

Maliksi appealed to the NLRC. In turn, in a decision dated January 26, 1998, the NLRC reversed that of the Labor Arbiter by declaring Maliksi a regular employee of the petitioner and ordering the latter to reinstate him without loss of seniority rights and with full benefits, to wit:

WHEREFORE, as recommended, the decision below is hereby SET ASIDE. Accordingly, judgment is hereby rendered directing respondent SMC-Magnolia Division to reinstate complainant as a regular employee without loss of seniority rights and other privileges and to pay complainant full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to time of his actual reinstatement, plus 10% of the total money award for and attorney's fees.

SO ORDERED.[5]

From the aforementioned decision of the NLRC, SMC went on certiorari to the CA in CA-G.R. SP No. 50321.

As stated at the outset, the CA, in the herein assailed Decision[6] dated September 30, 1999, affirmed in toto that of the NLRC. In so doing, the CA found SMC to have utilized PHILSSEC, Lipercon Services, Inc. (Lipercon) and Skillpower, Inc. (Skillpower) as conduits to circumvent Article 280 of the Labor Code, employing Maliksi as contractual or project employee through these entities, thereby undermining his right to gain regular employment status under the law. The appellate court echoed the NLRC's assessment that Maliksi's work was necessary or desirable in the business of SMC in its Magnolia Division, for more than the required one-year period. It affirmed

the NLRC's finding that the three (3) conduit entities adverted to, Lipercon and Skillpower, are labor-only contractors such that Maliksi's previous employment contracts with SMC, through these two entities, are deemed to have been entered into in violation of labor laws. Consequently, Maliksi's employment with SMC became permanent and regular after the statutory period of one year of service through these entities. The CA concluded that on account of his past employment contracts with SMC under Lipercon and Skillpower, Maliksi was already a regular employee of SMC when he entered into SMC's computerization project as part of the PHILSSEC project complement.

With its motion for reconsideration having been denied by the CA in its Resolution of March 20, 2001, SMC is now with this Court via the present recourse on the following assigned errors:

I

The Court of Appeals gravely erred in declaring private respondent a regular employee of petitioner SMC despite its findings that PHILSSEC, the contractor that employed private respondent, is an independent job contractor.

Corollarily, the declaration of the Honorable Court of Appeals that private respondent is a regular employee of petitioner SMC proceeds from the erroneous premise that private respondent was already a regular employee of SMC when he was hired by the independent contractor PHILSSEC. Having been placed in petitioner SMC by a supposed labor-only contractor, for just five months and for a different job, three years after his last assignment therein, private respondent had not thereby become a regular employee of petitioner SMC.

II

The Court of Appeals gravely erred in ultimately resolving the case upon the principle that "all doubts must be resolved in favor of labor"; certainly, protection to labor does not imply sanctioning a plain injustice to the employer, particularly where private respondent was shown to have stated falsehoods and committed malicious intercalations and misrepresentations.

III

The Court of Appeals gravely erred in declaring that private respondent was not part of the of the personnel group in the computerization program of petitioner SMC under PHILSSEC.

We DENY.

SMC concedes that Maliksi, before his employment with PHILSSEC, worked in SMC from November 1988 to April 1990, but as employee of Skillpower^[7] and that he was previously assigned to SMC between 1981 up to February 1985, "for periods spread apart."^[8] The Labor Arbiter found, as earlier stated, that Maliksi rendered service with Lipercon from 1 April 1981 to February 1982 as budget head assigned to SMC-Beer Division; from July 1983 to April 1985 with Skillpower as accounting clerk assigned to SMC-Magnolia Division, then from October 1988 to 1989^[9] also with Skillpower as acting clerk assigned to SMC-Magnolia Finance, and from October 1989 to 31 October 1990 with PHILSSEC assigned to Magnolia Finance as accounting clerk. In all, it appears that, while under the employ of either Lipercon or Skillpower, Maliksi has undisputedly rendered service with SMC for at least three years and seven months.^[10]

The Court takes judicial notice of the fact that Lipercon and Skillpower were declared to be labor-only contractors,^[11] providing as they do manpower services to the public for a fee. The existence of an employer-employee relationship is factual and we give due deference to the factual findings of both the NLRC and the CA that an employer-employee relationship existed between SMC (or its subsidiaries) and Maliksi. Indeed, having served SMC for an aggregate period of more than three (3) years through employment contracts

with these two labor contractors, Maliksi should be considered as SMC's regular employee. The hard fact is that he was hired and re-hired by SMC to perform administrative and clerical work that was necessary to SMC's business on a daily basis. In *Bustamante v. National Labor Relations Commission*, [12] we ruled:

In the case at bar, petitioners were employed at various periods from 1985 to 1989 for the same kind of work they were hired to perform in September 1989. Both the labor arbiter and the respondent NLRC agree that petitioners were employees engaged to perform activities necessary in the usual business of the employer. As laborers, harvesters or sprayers in an agricultural establishment which produces high grade bananas, petitioners' tasks are indispensable to the year-round operations of respondent company. This belies the theory of respondent company that the employment of petitioners was terminated due to the expiration of their probationary period in June 1990. If at all significant, the contract for probationary employment was utilized by respondent company as a chicanery to deny petitioners their status as regular employees and to evade paying them the benefits attached to such status. Some of the petitioners were hired as far back as 1985, although the hiring was not continuous. They were hired and re-hired in a span of from two to four years to do the same type of work which conclusively shows the necessity of petitioners' service to the respondent company's business. Petitioners have, therefore, become regular employees after performing activities which are necessary in the usual business of their employer. But, even assuming that the activities of petitioners in respondent company's plantation were not necessary or desirable to its business, we affirm the public respondent's finding that all of the complainants (petitioners) have rendered non-continuous or broken service for more than one (1) year and are consequently considered regular employees.

We do not sustain public respondent's theory that private respondent should not be made to compensate petitioners for backwages because its termination of their employment was not made in bad faith. The act of hiring and re-hiring the petitioners over a period of time without considering them as regular employees evidences bad faith on the part of private respondent. The public respondent made a finding to this effect when it stated that the subsequent re-hiring of petitioners on a probationary status "clearly appears to be a convenient subterfuge on the part of management to prevent complainants (petitioners) from becoming regular employees." (Emphasis supplied)

It is worth noting that, except for the computerization project of PHILSSEC, petitioner did not make any insinuation at all that the services of Maliksi with SMC was project-related such that an employment contract with Lipercon and Skillpower was necessary.

In *Madriaga v. Court of Appeals*, [13] the Court, confronted with the same issue now being addressed, declared that regularization of employment in SMC should extend to those whose situation is similar to the complainants in said case. We wrote:

This is the third time that the parties have invoked the power of this Court to decide the labor dispute involved in this case. The generative facts of the case are as follows:

On 04 March 1988, the NOWM and a number of workers-complainants filed with the Arbitration Branch of the NCR, NLRC, Manila, against San Miguel Corporation, Philippine Dairy Products Corporation, Magnolia Dairy Products, Skillpower Corporation and Lipercon Services, Inc. for illegal dismissal.

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The Voluntary Arbitrator rendered a decision on 29 July 1988, the dispositive of which states:

WHEREFORE, it is hereby declared that complainants are regular employees of SMC and PDPC. Accordingly, SMC and PDPC are hereby ordered to reinstate the dismissed 85 complainants to their former positions as their regular employees effective from the date of the filing of their complaints with full backwages less the daily financial assistance of P30.00 per day each, extended to them by Lipercon and Skillpower.

Aggrieved by the said decision of the Voluntary Arbitrator, SMC and PDPC filed a petition for certiorari before the Supreme Court.

It was upon the filing of the said petition for certiorari that the Court had the first opportunity to pass upon the controversies involved in this case. In a Resolution dated 30 August 1989, the Court dismissed G.R. No. 85577 entitled, "Philippine Dairy Products Corporation and San Miguel Corporation – Magnolia Dairy Products Division v. Voluntary Arbitrator Tito F. Genilo of the Department of Labor and Employment (DOLE) and the National Organization of Workingmen (NOWM)" for lack of merit. The Court held in full:

Individual private respondents are xxx [SMC, et al.] laborers supplied to petitioners by Skillpower Corporation and Lipercon Services, Inc., on the basis of contracts of services. Upon expiration of the said contracts, individual private respondents were denied entry to petitioners' premises. Individual private respondents and respondent union thus filed separate complaints for illegal dismissal against petitioners San Miguel Corp., Skillpower Corporation and Lipercon Services, Inc., in the [NLRC, NCR] After consolidation and voluntary arbitration, respondent Labor Arbiter Tito F. Genilo rendered a decision xxx declaring individual private respondents regular employees of petitioners and ordering the latter to reinstate the former and to pay them backwages. On motion for execution filed by private respondents, Labor Arbiter Genilo issued on October 20, 1988 an order directing, among others, the regularization of "all the complainants which include those still working and those already terminated." Hence, this petition for certiorari with injunction.

Petitioners contend that prior to reinstatement, individual private respondents should first comply with certain requirements, like submission of NBI and police clearances and submission to physical and medical examinations, since petitioners are deemed to be direct employers and have the right to ascertain the physical fitness and moral uprightness of its employees by requiring the latter to undergo periodic examinations, and that petitioners may not be ordered to employ on regular basis the other workers rendering services to petitioners by virtue of a similar contract of services between petitioners and Skillpower Corporation and Lipercon Services, Inc. because such other workers were not parties to or were not impleaded in the voluntary arbitration case.

Considering that the clearances and examinations sought by petitioners from private respondents are not 'periodic' in nature but are made preconditions for reinstatement, as in fact the petition filed alleged that reinstatement shall be effective upon compliance with such requirements, (pp. 5-6 thereof) which should not be the case because this is not a case of initial hiring, the workers concerned having rendered years of service to petitioners who are considered direct employers, and that regularization is a labor benefit that should apply to all qualified employees similarly situated and may not be denied merely because some employees were allegedly not parties to or were not impleaded in the voluntary arbitration case, even as the finding of Labor Arbiter Genilo is to the contrary, this Court finds no grave abuse of discretion committed by Labor Arbiter Genilo in issuing the questioned order of October 20, 1988.

ACCORDINGLY, the Court Resolved to Dismiss the petition for lack of merit.

In fine, the Court affirmed the ruling of the Voluntary Arbitrator and declared that therein complainants are regular employees of San Miguel Corporation (SMC) and PDPC. It must be noted that in the abovequoted Resolution, the Court extended the benefit of regularization not only to the original complainants but also to those workers who are "similarly situated" to therein complainants. Herein petitioners are among those who are "similarly situated." [14] (Emphasis supplied)

We find respondent Maliksi to be similarly situated with those of the complainants in *Madriaga*. Indeed, Lipercon and Skillpower have figured in not just a few of our decisions, [15] so much so that we are inclined to believe that these two were involved in labor-only contracting with respect to Maliksi. We hold that the finding of the NLRC and the CA as to SMC's resorting to labor-only contracting is entitled to consideration in its full weight.

With respect to PHILSSEC, there was no need for Maliksi to be employed under the former's computerization program to be considered a regular employee of SMC at the time. Moreover, SMC itself admits that Maliksi's work under the computerization program did "not require the operation of a computer system, such as the software program being developed by PHILSSEC."^[16] Given this admission, we are simply at a loss to understand why Maliksi should be included in the computerization project as a project employee. Not being a computer expert, Maliksi's inclusion in the project was uncalled for. To our mind, his placement in the project was for the purpose of circumventing labor laws. The evidence shows that immediately before he entered the PHILSSEC project in October 1989, Maliksi was fresh out of his employment with SMC (through Skillpower) as acting clerk assigned to SMC-Magnolia Finance (from October 1988 to 1989).

Maliksi's work under the PHILSSEC project was mainly administrative in nature and necessary to the development of SMC's business. These were:

- posting manually the daily account balances in the workset;
- fitting the daily totals into the monthly totals;
- comparing the manual totals with the computer generated totals;
- locating the differences between the totals; and,
- adjusting and correcting errors.

Simply put, the data gathered by SMC on a daily basis through Maliksi's work would be submitted for analysis and evaluation, thereby allowing SMC to make the necessary business decisions that would enable it to market its products better, or monitor its sales and collection with efficiency. Without the data gatherer or encoder, no analysis could occur. SMC would then, for the most part, be kept in the dark.

As to the petitioner's second assigned error, we hold that there is no need to resolve the present case under the principle that all doubts should be resolved in favor of the workingman. The perceived doubt does not obtain in the first place.

We understand Maliksi's desperation in making his point clear to SMC, which unduly refuses to acknowledge his status as a regular employee. Instead, he was juggled from one employment contract to another in a continuous bid to circumvent labor laws. The act of hiring and re-hiring workers over a period of time without considering them as regular employees evidences bad faith on the part of the employer.^[17] Where, from the circumstances, it is apparent that periods have been imposed to preclude the acquisition of tenurial security by the employee, the policy, agreement or practice should be struck down as contrary to public policy, morals, good customs or public order.^[18] In point of law, any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall be liable for the damage.^[19]

Ways and means contrived by employers to countermand labor laws granting regular employment status to their workers are numerous and long. For instance, they toss the poor workers from one job contractor to another, make them go through endless applications, lining up, paperwork, documentation, and physical examinations; make them sign five- or ten-month-only job contracts, yet re-hire them after brief "rest periods," but not after requiring them to go through the whole application and selection process once again; prepare and have them sign waivers, quitclaims, and the like; refuse to issue them identification cards, receipts or any other concrete proof of employment or documentary proof of payment of their salaries; fail to enroll them for entitlement to social security and other benefits; give them positions, titles or designations that connote short-term employment.

Others are more creative: they set up "distributors" or "dealers" which are, in reality, shell or dummy companies.

In this manner, the mother company avoids the employer-employee relations, and is thus shielded from liability from employee claims in case of illegal dismissal, closure, unfair labor practices and the like. In those instances, the poor employees, finding the shell or dummy company to be without assets, often end up confused and without recourse as to whom to run after. They sue the mother company which conveniently sets up the defense of absence of employer-employee relations. In *San Miguel Corporation v. MAERC Integrated Services, Inc.*,^[20] we took note of the practice of hiring employees through labor contractors that catered exclusively to the employment needs of SMC or its divisions or other specific business interests, such that after the specific SMC business or division ceases to do business, the labor contractor likewise ceases its operations.

The contrivances may be many and the schemes ingenious and imaginative. But this Court will not hesitate to put pen to a line and defend the worker's right to be secure in his (or her) proprietary right to regular employment and his right to a secure employment, viz, one that is free from fear and doubt, that anytime he could be removed, retrenched, his contract not renewed or he might not be re-hired. The ramifications may seem trivial, but we cannot allow the ordinary Filipino worker's right to tenurial security to be put in jeopardy by recurrent but abhorrent practices that threaten the very lives of those that depend on him.

Considering, however, the supervening event that SMC's Magnolia Division has been acquired by another entity, it appears that private respondent's reinstatement is no longer feasible. Instead, he should be awarded separation pay as an alternative.^[21] Likewise, owing to petitioner's bad faith, it should be held liable to pay damages for causing undue injury and inconvenience to the private respondent in its contractual hiring-firing-rehiring scheme. WHEREFORE, the instant petition is DENIED and the assailed CA decision dated September 30, 1999 is AFFIRMED, with the MODIFICATION that if the reinstatement of private respondent is no longer practicable or feasible, then petitioner SMC is ordered to pay him, in addition to the other monetary awards, separation pay for the period from October 31, 1990 when he was dismissed until he shall have been actually paid at the rate of one (1) month salary for every year of his employment, with a fraction of at least six (6) months being considered as one (1) year, or the rate of separation pay awarded by petitioner to its other regular employees as provided by written agreement, policy or practice, whichever is higher or most beneficial to private respondent.

In addition, petitioner is hereby suffered to indemnify private respondent the amount of P50,000.00 as nominal damages for its bad faith in juggling the latter from one labor contractor to another and causing him unnecessary injury and inconvenience, and for denying him his proprietary right to regular employment.

Let this case be REMANDED to the Labor Arbiter for the computation of private respondent's backwages, proportionate 13th month pay, separation pay, attorneys' fees and other monetary awards; and for immediate execution.

Costs against the petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, and Azcuna, JJ., concur.

Corona, J., on leave.

[1] Penned by Associate Justice Presbitero J. Velasco, Jr. (now a member of this Court) with Associate Justices Fermin Martin, Jr. (ret.) and B.A. Adefuin-de la Cruz (ret.), concurring; Rollo, pp. 63-74.

[2] Id. at 76-77.

[3] Id. at 2-3.

[4] Id. at 11.

[5] Supra note 4.

[6] Supra note 1.

[7] Petition for Review on Certiorari, Id. at 36, 42-43.

[8] Id. at 41, 125.

[9] As to what month of the year the record does not disclose.

[10] Disregarding his October 1988 to 1989 employment, since the period covered remains unclear.

[11] *Madriaga v. Court of Appeals*, G.R. No. 142001, July 14, 2005, 463 SCRA 298; *Palmeria v. National Labor Relations Commission*, G.R. Nos. 113290-91, August 3, 1995, 247 SCRA 57; *Shoppers Gain Supermart v. National Labor Relations Commission*, G.R. No. 110731, July 26, 1996, 259 SCRA 411; *Guarin v. Lipercon*, G.R. No. 86010, October 3, 1989, 178 SCRA 267; *Magnolia Dairy Products v. National Labor Relations Commission*, G.R. No. 114952, January 29, 1996, 252 SCRA 483; *Philippine Fuji Xerox Corporation v. National Labor Relations Commission*, G.R. No. 111501, March 5, 1996, 254 SCRA 294; *Bantolino v. Coca-Cola Bottlers Phils.*, G.R. No. 153660, June 10, 2003, 403 SCRA 699.

[12] G.R. No. 111651, March 15, 1996, 255 SCRA 145, 149-150.

[13] Supra.

[14] Id. at 301-304.

[15] Supra note 8.

[16] Rollo, p.52.

[17] *Bustamante v. National Labor Relations Commission*, supra.

[18] *Palomares v. National Labor Relations Commission*, G.R. No. 120064, August 15, 1997, 277 SCRA 439.

[19] Article 21, Civil Code of the Philippines.

[20] G.R. No. 149011, June 28, 2005, 405 SCRA 579.

[21] *Alfante v. NLRC*, G.R. No. 122655, December 15, 1997, 283 SCRA 340.

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