

**SAMAHAN NG MGA MANGGAGAWA SA HYATT –
NUWHRAIN-APL, PETITIONER, VS. VOLUNTARY ARBITRATOR
FROILAN M. BACUNGAN AND HYATT REGENCY MANILA,
RESPONDENTS.**

G.R. No. 149050. March 25, 2009

Ponente: TINGA, J.

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TINGA, J.:

Before the Court is a petition for review on certiorari,[1] assailing the twin resolutions of the Court of Appeals in CA-G.R. SP No. 60959. The Resolution[2] dated 16 November 2000 dismissed outright petitioner's special civil action for certiorari therein on the ground that it was a wrong remedy while the Resolution[3] dated 10 July 2001 denied petitioner's motion for reconsideration.

The following factual antecedents are matters of record.

In 1995 and 1996, Mario Dacles and Teodoro Valencia respectively assumed their duties as glass cleaners at Hyatt Regency Manila (respondent Hyatt), pursuant to the cleaning service contract[4] executed between respondent Hyatt and City Service Corporation (CSC).[5]

Meanwhile, in April 1998, respondent Hyatt hired Amelia Dalmacio and Renato Dazo on a casual basis as florist/sales clerk and helper/driver, respectively. After their contracts expired on 30 August 1998, Dalmacio and Dazo continued reporting for work. On 16 September 1998, Dalmacio and Dazo signed another employment contract with respondent Hyatt.[6]

During the Labor Management Committee Meeting (LMC), petitioner Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL (petitioner union), a legitimate labor organization composed of the rank-and-file employees of respondent Hyatt, questioned the status as non-regular employees of Dacles, Valencia, Dalmacio and Dazo (Dacles, et al.).[7]

On 19 April 1999, petitioner union and respondent Hyatt agreed to submit the matter for resolution through the grievance machinery as provided for in their collective bargaining agreement (CBA). Petitioner union claimed that Dacles, et al. were regular employees on account of the nature of their functions as well as the length of their service. On the other hand, respondent Hotel maintained that Dalmacio and Dazo were mere project employees whose employments were co-terminus with the existence of the flower shop outlet and that Dacles and Valencia were employees of CSC, an independent contractor.

On 16 September 1999, respondent Hyatt dismissed Dacles and Valencia and disallowed them from reporting to work on the ground that the service contract between respondent Hyatt and CSC had been terminated.

Petitioner union and respondent Hyatt were unable to settle the dispute through the grievance procedure and, thus, agreed to elevate the issue for voluntary arbitration. The parties selected Dean Froilan Bacungan as voluntary

arbitrator. After the exchange of responsive pleadings, the case was deemed submitted for resolution.

On 11 January 2000, the voluntary arbitrator rendered a decision, the dispositive portion of which reads:

WHEREFORE, the Voluntary Arbitrator rules that:

- Mario Dacles and Teodoro Valencia are not employees of the Hotel. They are employees of the City Service Corporation.

- As employees of the Hotel, Amelia Dalmacio and Renato Dazo can not be legally terminated on September 17, 1999 and November 16, 1999 respectively, but they may be legally terminated anytime the Hotel closes down the Flower Shop wherein Dalmacio and Dazo work, or earlier for cause provided by law.

SO ORDERED.[8]

Petitioner union moved for reconsideration, which was denied in a Resolution dated 10 July 2000. On 08 September 2000, petitioner union elevated the matter to the Court of Appeals via a petition for certiorari.

In the assailed Resolution dated 16 November 2000, the Court of Appeals dismissed the petition, to wit:

Contrary to Secs. 1, 4 and 6, in relation to Sec. 7, Rule 43 of the 1997 Rules on Civil Procedure, petitioner resorted to the instant special civil action for certiorari, instead of a petition for review; its payment of the docket fees is short by P10.00; and the petition is not accompanied by a certified true copy of the motion for reconsideration of the decision dated January 11, 2000.

If the action were to be treated as a petition for review, then it was filed out of time. On July 20, 2000, petitioner received the resolution dated July 10, 2000 denying its motion for reconsideration of the assailed decision. Consequently, it had until July 25, 2000, or fifteen days from notice of denial of the motion for reconsideration, within which to file a petition for review (Sec. 4, Rule 43). However, the petition was only filed on September 8, 2000, or forty-five days beyond the reglementary period.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.[9]

Petitioner sought reconsideration, arguing that the voluntary arbitrator's decision was rendered under Title VII-A of the Labor Code and, therefore, is not covered by Rule 43 of the 1997 Rules of Civil Procedure as provided in Section 2 thereof. On 10 July 2001, the Court of Appeals rendered a resolution denying the motion for reconsideration.[10]

Hence, the instant petition, attributing the following errors to the Court of Appeals:

I.

THE HONORABLE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN RULING THAT THE APPROPRIATE REMEDY FOR ASSAILING THE DECISION OF THE RESPONDENT VOLUNTARY ARBITRATOR IS AN APPEAL BY PETITION FOR REVIEW UNDER RULE 43 AND NOT A PETITION FOR CERTIORARI UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN DISMISSING THE PETITION ON THE BASIS OF THE REQUIREMENTS SET FORTH IN RULE 43 OF THE 1997 RULES OF CIVIL PROCEDURE.[11]

Petitioner union argues that the proper remedy to assail a decision of a voluntary arbitrator is a special civil action

for certiorari under Rule 65 of the Rules of Court and not an appeal via a petition for review under Rule 43. Petitioner union's theory is based on the following ratiocinations: first, the decision of the voluntary arbitrator is similar to the decisions rendered by the National Labor Relations Commission (NLRC) and the Secretary of Labor and Employment, which become final and executory after ten (10) calendar days from receipt of notice, in that the Labor Code expressly disallows an appeal from their judgment or final order; second, Section 2 of Rule 43, which exempts judgments or final orders issued under the Labor Code from an appeal via Rule 43, should apply with equal force to decisions of labor voluntary arbitrators.

The petition lacks merit.

The question on the proper recourse to assail a decision of a voluntary arbitrator has already been settled in *Luzon Development Bank v. Association of Luzon Development Bank Employees*,^[12] where the Court held that the decision or award of the voluntary arbitrator or panel of arbitrators should likewise be appealable to the Court of Appeals, in line with the procedure outlines in Revised Administrative Circular No. 1-95 (now embodied in Rule 43 of the 1997 Rules of Civil Procedure), just like those of the quasi-judicial agencies, boards and commissions enumerated therein, and consistent with the original purpose to provide a uniform procedure for the appellate review of adjudications of all quasi-judicial entities.^[13]

Subsequently, in *Alcantara, Jr. v. Court of Appeals*,^[14] and *Nippon Paint Employees Union v. Court of Appeals*,^[15] the Court reiterated the aforequoted ruling. In *Alcantara*, the Court held that notwithstanding Section 2 of Rule 43, the ruling in *Luzon Development Bank* still stands. The Court explained, thus:

The provisions may be new to the Rules of Court but it is far from being a new law. Section 2, Rules 42 of the 1997 Rules of Civil Procedure, as presently worded, is nothing more but a reiteration of the exception to the exclusive appellate jurisdiction of the Court of Appeals, as provided for in Section 9, *Batas Pambansa Blg. 129*, as amended by Republic Act No. 7902:

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Employees' Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

The Court took into account this exception in *Luzon Development Bank* but, nevertheless, held that the decisions of voluntary arbitrators issued pursuant to the Labor Code do not come within its ambit x x x^[16]

On some occasions, rules of procedure may be relaxed and on that basis the Court of Appeals could have treated the petition for certiorari as a petition for review under Rule 43. However, as correctly pointed out by the Court of Appeals, the petition was filed beyond the reglementary period for filing a petition for review under Rule 43. It is elementary in remedial law that the use of an erroneous mode of appeal is a cause for dismissal of the petition for certiorari and it has been repeatedly stressed that a petition for certiorari is not a substitute for a lost appeal.^[17]

In any event, the voluntary arbitrator did not commit any reversible error in ruling that Dacles and Valencia were employees of CSC, an independent contractor, whose services may be terminated upon the expiration of the contract for cleaning services between CSC and respondent Hyatt. There is no dispute that Dacles and Valencia performed services at respondent Hyatt pursuant to the said contract. The Court affirms the ruling of the voluntary arbitrator that Dacles and Valencia cannot be considered as employees of respondent Hyatt in the absence of evidence to prove that CSC had been engaged in labor-only contracting.

The Court also affirms the voluntary arbitrator's findings that Dalmacio and Dazo were project employees, whose employment may be terminated only upon the closure of the flower shop. Said findings are in accord with the conditions of the employment contracts between respondent Hyatt and the two employees.

Well-settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record.[18]

WHEREFORE, the instant petition for review on certiorari is DENIED and the resolutions dated 16 November 2000 and 10 July 2001 of the Court of Appeals in CA-G.R. SP No. 60959 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Austria-Martinez[*], Corona[**], Velasco, Jr., and Brion, JJ., concur.

[*]Additional member per Special Order No. 593 in lieu of J. Quisumbing who is on official leave.

[**]Additional member per Special Order No. 600 in lieu of J. Carpio-Morales who is on official leave.

[1] Rollo, pp. 3-26.

[2] Id. at 28; penned by Justice Edgardo P. Cruz and concurred in by Justices Eubulo G. Verzola, Chairman of the Ninth Division, and Marina L. Buzon.

[3] Id. at 30-31.

[4] Id. at 45-50.

[5] Id. at 6.

[6] Id. at 7.

[7] Id.

[8] Id. at 157.

[9] Id. at 28.

[10] Supra note 3.

[11] Id. at 11-12.

[12] 319 Phil. 262 (1995).

[13] Id. at 271.

[14] G.R. No. 143397, 435 Phil. 395 (2002).

[15] G.R. No. 159010, 19 November 2004, 443 SCRA 286.

[16] Alcantara, Jr. v. Court of Appeals, supra note 19 at 404-405.

[17] Nippon Paint Employees Union-Olalia v. Court of Appeals, supra note 20 at 291.

[18] Colegio de San Juan de Letran-Calamba v. Villas, 447 Phil. 692, 700 (2003).

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