

RADIN C. ALCIRA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MIDDLEBY PHILIPPINES CORPORATION/FRANK THOMAS, XAVIER G. PEÑA AND TRIFONA F. MAMARADLO, RESPONDENTS.

G.R. No. 149859. June 09, 2004

Ponente: CORONA, J.

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CORONA, J.:

Before us on appeal is the decision[1] of the Court of Appeals[2] dated June 22, 2001 affirming the decision[3] of the National Labor Relations Commission[4] dated March 23, 1999 which, in turn, affirmed the decision[5] of labor arbiter Pedro Ramos dated May 19, 1998 dismissing petitioner Radin Alcira's complaint for illegal dismissal with prayer for reinstatement, backwages, moral damages, exemplary damages and attorney's fees.

The facts follow.

Respondent Middleby Philippines Corporation (Middleby) hired petitioner as engineering support services supervisor on a probationary basis for six months. Apparently unhappy with petitioner's performance, respondent Middleby terminated petitioner's services. The bone of contention centered on whether the termination occurred before or after the six-month probationary period of employment.

The parties, presenting their respective copies of Alcira's appointment paper, claimed conflicting starting dates of employment: May 20, 1996 according to petitioner and May 27, 1996 according to respondent. Both documents indicated petitioner's employment status as "probationary (6 mos.)" and a remark that "after five months (petitioner's) performance shall be evaluated and any adjustment in salary shall depend on (his) work performance." [6]

Petitioner asserts that, on November 20, 1996, in the presence of his co-workers and subordinates, a senior officer of respondent Middleby in bad faith withheld his time card and did not allow him to work. Considering this as a dismissal "after the lapse of his probationary employment," petitioner filed on November 21, 1996 a complaint in the National Labor Relations Commission (NLRC) against respondent Middleby contending that he had already become a regular employee as of the date he was illegally dismissed. Included as respondents in the complaint were the following officers of respondent Middleby: Frank Thomas (General Manager), Xavier Peña (Human Resources Manager) and Trifona Mamaradlo (Engineering Manager).

In their defense, respondents claim that, during petitioner's probationary employment, he showed poor performance in his assigned tasks, incurred ten absences, was late several times and violated company rules on the wearing of uniform. Since he failed to meet company standards, petitioner's application to become a regular employee was disapproved and his employment was terminated.

On May 19, 1998, the labor arbiter dismissed the complaint on the ground that: (1) respondents were able to prove that petitioner was apprised of the standards for becoming a regular employee; (2) respondent Mamaradlo's

affidavit showed that petitioner “did not perform well in his assigned work and his attitude was below par compared to the company’s standard required of him” and (3) petitioner’s dismissal on November 20, 1996 was before his “regularization,” considering that, counting from May 20, 1996, the six-month probationary period ended on November 20, 1996. [7]

On March 23, 1999, the NLRC affirmed the decision of the labor arbiter.

On June 22, 2001, the Court of Appeals affirmed the judgment of the NLRC. According to the appellate court:

Even assuming, arguendo, that petitioner was not informed of the reasonable standards required of him by Middleby, the same is not crucial because there is no termination to speak of but rather expiration of contract. Petitioner loses sight of the fact that his employment was probationary, contractual in nature, and one with a definite period. At the expiration of the period stipulated in the contract, his appointment was deemed terminated and a notice or termination letter informing him of the non-renewal of his contract was not necessary.

While probationary employees enjoy security of tenure such that they cannot be removed except for just cause as provided by law, such protection extends only during the period of probation. Once that period expired, the constitutional protection could no longer be invoked. Legally speaking, petitioner was not illegally dismissed. His contract merely expired.[8]

Hence, this petition for review based on the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED, BLATANTLY DISREGARDED THE LAW AND ESTABLISHED JURISPRUDENCE, IN UPHOLDING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION.

II

THE COURT OF APPEALS GRAVELY ERRED AND BLATANTLY DISREGARDED THE LAW IN HOLDING THAT PROBATIONARY EMPLOYMENT IS EMPLOYMENT FOR A DEFINITE PERIOD.

III

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT AN EMPLOYER CAN BE PRESUMED TO HAVE COMPLIED WITH ITS DUTY TO INFORM THE PROBATIONARY EMPLOYEE OF THE STANDARDS TO MAKE HIM A REGULAR EMPLOYEE.

IV

THE COURT OF APPEALS GRAVELY ERRED AND FAILED TO AFFORD PROTECTION TO LABOR IN NOT APPLYING TO THE INSTANT CASE THE DOCTRINE LAID DOWN BY THIS HONORABLE COURT IN SERRANO VS. NLRC, ET. AL., G.R. NO. 117040, JANUARY 27, 2000.[9]

Central to the matter at hand is Article 281 of the Labor Code which provides that:

ART. 281. PROBATIONARY EMPLOYMENT. Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or 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. An employee who is allowed to work after a probationary period shall be considered a regular employee.

The first issue we must resolve is whether petitioner was allowed to work beyond his probationary period and was therefore already a regular employee at the time of his alleged dismissal. We rule in the negative.

Petitioner claims that under the terms of his contract, his probationary employment was only for five months as indicated by the remark “Please be informed that after five months, your performance shall be evaluated and any adjustment in salary shall depend on your work performance.” The argument lacks merit. As correctly held by the labor arbiter, the appointment contract also stated in another part thereof that petitioner’s employment status was “probationary (6 mos.).” The five-month period referred to the evaluation of his work.[10]

Petitioner insists that he already attained the status of a regular employee when he was dismissed on November 20, 1996 because, having started work on May 20, 1996, the six-month probationary period ended on November 16, 1996. According to petitioner’s computation, since Article 13 of the Civil Code provides that one month is composed of thirty days, six months total one hundred eighty days. As the appointment provided that petitioner’s status was “probationary (6 mos.)” without any specific date of termination, the 180th day fell on November 16, 1996. Thus, when he was dismissed on November 20, 1996, he was already a regular employee.

Petitioner’s contention is incorrect. In *CALS Poultry Supply Corporation, et. al. vs. Roco, et. al.*, [11] this Court dealt with the same issue of whether an employment contract from May 16, 1995 to November 15, 1995 was within or outside the six-month probationary period. We ruled that November 15, 1995 was still within the six-month probationary period. We reiterate our ruling in *CALS Poultry Supply*:

(O)ur computation of the 6-month probationary period is reckoned from the date of appointment up to the same calendar date of the 6th month following.(italics supplied)

In short, since the number of days in each particular month was irrelevant, petitioner was still a probationary employee when respondent Middleby opted not to “regularize” him on November 20, 1996.

The second issue is whether respondent Middleby informed petitioner of the standards for “regularization” at the start of his employment.

Section 6 (d) of Rule 1 of the Implementing Rules of Book VI of the Labor Code (Department Order No. 10, Series of 1997) provides that:

xxx xxx xxx

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

xxx xxx xxx

We hold that respondent Middleby substantially notified petitioner of the standards to qualify as a regular employee when it apprised him, at the start of his employment, that it would evaluate his supervisory skills after five months. In *Orient Express Placement Philippines vs. National Labor Relations Commission*, [12] we ruled that an employer failed to inform an employee of the reasonable standards for becoming a regular employee:

Neither private respondent’s Agency-Worker Agreement with ORIENT EXPRESS nor his Employment Contract with NADRICO ever mentioned that he must first take and pass a Crane Operator’s License Examination in Saudi Arabia before he would be allowed to even touch a crane. Neither did he know that he would be assigned as floorman pending release of the results of the examination or in the event that he failed; more importantly, that he would be subjected to a performance evaluation by his superior one (1) month after his hiring to determine whether the company was amenable to continuing with his employment. Hence, respondent Flores could not be faulted for precisely harboring the impression that he was hired as crane operator for a definite period of one (1) year to commence upon his arrival at the work-site and to terminate at the end of one (1) year. No other condition was laid out except that he was to be on probation for three (3) months.(emphasis supplied)

Conversely, an employer is deemed to substantially comply with the rule on notification of standards if he appraises the employee that he will be subjected to a performance evaluation on a particular date after his hiring. We agree with the labor arbiter when he ruled that:

In the instant case, petitioner cannot successfully say that he was never informed by private respondent of the standards that he must satisfy in order to be converted into regular status. This rans (sic) counter to the agreement between the parties that after five months of service the petitioner's performance would be evaluated. It is only but natural that the evaluation should be made vis-à-vis the performance standards for the job. Private respondent Trifona Mamaradlo speaks of such standard in her affidavit referring to the fact that petitioner did not perform well in his assigned work and his attitude was below par compared to the company's standard required of him.[13]

The third issue for resolution is whether petitioner was illegally dismissed when respondent Middleby opted not to renew his contract on the last day of his probationary employment.

It is settled that even if probationary employees do not enjoy permanent status, they are accorded the constitutional protection of security of tenure. This means they may only be terminated for just cause or when they otherwise fail to qualify as regular employees in accordance with reasonable standards made known to them by the employer at the time of their engagement.[14]

But we have also ruled in *Manlimos, et. al. vs. National Labor Relations Commission*[15] that this constitutional protection ends on the expiration of the probationary period. On that date, the parties are free to either renew or terminate their contract of employment. *Manlimos* concluded that "(t)his development has rendered moot the question of whether there was a just cause for the dismissal of the petitioners xxx." [16] In the case at bar, respondent Middleby exercised its option not to renew the contract when it informed petitioner on the last day of his probationary employment that it did not intend to grant him a regular status.

Although we can regard petitioner's severance from work as dismissal, the same cannot be deemed illegal. As found by the labor arbiter, the NLRC and the Court of Appeals, petitioner (1) incurred ten absences (2) was tardy several times (3) failed to wear the proper uniform many times and (4) showed inferior supervisory skills. Petitioner failed to satisfactorily refute these substantiated allegations. Taking all this in its entirety, respondent Middleby was clearly justified to end its employment relationship with petitioner.

WHEREFORE, the petition is hereby DENIED.

No costs.

SO ORDERED.

Vitug, J., (Chairman), Sandoval-Gutierrez, and Carpio Morales, JJ., concur.

[1] Penned by Associate Justice Oswaldo D. Agcaoili and concurred in by Associate Justices Elvi John Asuncion and Juan Enriquez, Jr.; Rollo, pp. 90-95.

[2] Seventeenth Division.

[3] Rollo, pp. 70-76.

[4] First Division.

[5] Rollo, pp. 57-62.

[6] Rollo, p. 71.

[7] Rollo, pp. 59-62.

[8] Rollo, pp. 94-95.

[9] Rollo, p. 13.

[10] Rollo, p. 62.

[11] 385 SCRA 479, 488 [2002].

[12] 273 SCRA 256 [1997].

[13] Ibid., pp. 259-260.

[14] Agoy vs. National Labor Relations Commission, 252 SCRA 588, 595 [1996].

[15] 242 SCRA 145 [1995] citing Biboso vs. Victorias Milling Co., 76 SCRA 250 [1977]; Colegio de San Agustin vs. NLRC, 201 SCRA 398 [1991].

[16] Ibid., p. 156.

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