PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC., PETITIONER, VS. ROSALINA C. ARCEO, RESPONDENT.

G.R. NO. 149985. May 05, 2006

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure assailing the decision[1] of the Court of Appeals (CA) dismissing the petition for certiorari filed by petitioner.

In May 1990, respondent Rosalina Arceo (Arceo) applied for the position of telephone operator with petitioner Philippine Long Distance Telephone Company, Inc. - Tarlac Exchange (PLDT). She, however, failed the pre-employment qualifying examination. Having failed the test, Arceo requested PLDT to allow her to work at the latter's office even without pay. PLDT agreed and assigned her to its commercial section where she was made to perform various tasks like photocopying documents, sorting out telephone bills and notices of disconnection, and other minor assignments and activities. After two weeks, PLDT decided to pay her the minimum wage.

On February 15, 1991, PLDT saw no further need for Arceo's services and decided to fire her but, through the intervention of PLDT's commercial section supervisor, Mrs. Beatriz Mataguihan, she was recommended for an on-the-job training on minor traffic work. When she failed to assimilate traffic procedures, the company transferred her to auxiliary services, a minor facility.

Subsequently, Arceo took the pre-qualifying exams for the position of telephone operator two more times but again failed in both attempts.

Finally, on October 13, 1991, PLDT discharged Arceo from employment. She then filed a case for illegal dismissal before the labor arbiter.[2] On May 11, 1993, the arbiter ruled in her favor. PLDT was ordered to reinstate Arceo to her "former position or to an equivalent position." This decision became final and executory.

On June 9, 1993, Arceo was reinstated as casual employee with a minimum wage of P106 per day. She was assigned to photocopy documents and sort out telephone bills.

On September 3, 1996 or more than three years after her reinstatement, Arceo filed a complaint for unfair labor practice, underpayment of salary, underpayment of overtime pay, holiday pay, rest day pay and other monetary claims. She alleged in her complaint that, since her reinstatement, she had yet to be regularized and had yet to receive the benefits due to a regular employee.

On August 18, 1997, labor arbiter Dominador B. Saludares ruled that Arceo was already qualified to become a regular employee. He also found that petitioner denied her all the benefits and privileges of a regular employee. The dispositive portion of his decision read:

> WHEREFORE, premises considered, judgment is hereby rendered declaring respondent guilty of wanton disregard of the right of herein complainant to become a regular employee. Concomitantly, respondent is hereby ordered to pay complainant the following accrued benefits and privileges from May 11, 1993 up to the

present:

1. Underpayment - - - - - - - -

P181,395.00

2. Overtime pay - - - - - - - -

2,598.00

3. Premium pay - - - - - - - -

753.00

4. Allowance for Uniform - - - - - - - -

20,000.00

5. Cash gift - - - - - - - -

9,000.00

6. 13th month pay - - - - - - - -

45,946.17

7. Mid-year bonus - - - - - - - -

14,884.57

8. Longevity pay - - - - - - - -

5, 314.50

9. Sick leave - - - - - - - -

6,354.30

10. Rice Subsidy - - - - - - - -

27,250.00

11. Zero backlog - - - - - - - -

2,000.00

Total P316,496.24

> Likewise, respondent is hereby ordered to pay attorney's fees in the sum of P31,649.62 which is equivalent to ten [percent] (10%) of the amount awarded to complainant.
>
> The claim for damages is dismissed for lack of merit.[3] (emphasis supplied)

The National Labor Relations Commission (NLRC) took cognizance of the case on appeal. On November 28, 1997, it affirmed the decision of the labor arbiter only insofar as it found Arceo eligible to become a regular employee. With respect to her monetary claims, the NLRC remanded the case to the arbiter for reception of evidence.[4] It held:

> It is evidently a facetious averment emanating from the respondent that the complainant should forever remain

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> a casual employee. Not only is such argument wanting in merit, it clearly goes against the principle that the conferment of regular status to an employee is by operation of law. xxx
>
> With respect to the money claims, it is our opinion that the complainant is not entitled thereto insofar as her claims for 1993 is concerned for having been filed beyond the three year prescriptive period. However, as it concerns the claims for the period 1994 to 1996, it is Our view that the complainant is entitled, not only because it is within the prescriptive period but also on account of the continuous and unabated violation of the respondent in regard to the deprivation to the complainant not only of her rightful status as a regular employee but more particularly to the grant of the appropriate salaries and benefits.[5]

PLDT sought a reconsideration of the decision but the NLRC rejected it for lack of merit.

Rebuffed, PLDT went to the CA via a petition for certiorari[6] and ascribed grave abuse of discretion on the part of the NLRC for considering Arceo a regular employee by operation of law.

On June 29, 2001, the CA affirmed the contested decision of the NLRC. It held:

> xxx It is doctrinaire that in determining what constitutes regular employment, what is considered [as] the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer, i.e. if the work is usually necessary or desirable in the usual business or trade of the employer. xxx And even granting the argument of petitioner that the nature of Arceo's work is casual or temporary, still she had been converted into a regular employee by virtue of the proviso in the second paragraph of Article 280 for having worked with PLDT for more than one (1) year.[7] (emphasis supplied)

The CA likewise denied PLDT's motion for reconsideration. Hence, this petition.

PLDT argues that while Article 280 of the Labor Code "regularizes" a casual employee who has rendered at least one year of service (whether continuous or broken) the proviso is subject to the condition that the employment subsists or the position still exists. Even if Arceo had rendered more than one year of service as a casual employee, PLDT insisted that this fact alone would not automatically make her a regular employee since her position had long been abolished. PLDT also argues that it would be an even greater error if Arceo were to be "regularized" as a telephone operator since she repeatedly failed the qualifying exams for that position.

Thus, the main issue in this case: is Arceo eligible to become a regular employee of PLDT? Yes.

Article 280 of the Labor Code, as amended, provides:

> Art. 280. Regular and Casual Employment. â”€ The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph. Provided, that, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (emphasis ours)

Under the foregoing provision, a regular employee is (1) one who is either engaged to perform activities that are necessary or desirable in the usual trade or business of the employer or (2) a casual employee who has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

Under the first criterion, respondent is qualified to be a regular employee. Her work, consisting mainly of photocopying documents, sorting out telephone bills and disconnection notices, was certainly "necessary or desirable" to the business of PLDT. But even if the contrary were true, the uncontested fact is that she rendered service for more than one year as a casual employee. Hence, under the second criterion, she is still eligible to become a regular employee.

Petitioner's argument that respondent's position has been abolished, if indeed true, does not preclude Arceo's becoming a regular employee. The order to reinstate her also included the alternative to reinstate her to "a position equivalent thereto." Thus, PLDT can still "regularize" her in an equivalent position.

Moreover, PLDT's argument does not hold water in the absence of proof that the activity in which Arceo was engaged (like photocopying of documents and sorting of telephone bills) no longer subsists. Under Article 280, any employee who has rendered at least one year of service "shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists." For PLDT's failure to show that the activity undertaken by Arceo has been discontinued, we are constrained to confirm her "regularization" in that position.

From what date will she be entitled to the benefits of a regular employee? Considering that she has already worked in PLDT for more than one year at the time she was reinstated, she should be entitled to all the benefits of a regular employee from June 9, 1993 the day of her actual reinstatement.

PLDT's other contention that the "regularization" of respondent as telephone operator was not possible since she failed in three qualifying exams for that position is also untenable. It is understood that she will be regularized in the position she held prior to the filing of her complaint with the labor arbiter, or, if that position was already abolished, to an equivalent position. The position of telephone operator was never even considered in any of the assailed decisions of the labor arbiter, the NLRC or the CA.

WHEREFORE, this petition is DENIED.

Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, (Acting Chairperson), Azcuna, and Garcia, JJ., concur.
Puno, (Chairperson), J. on leave.

[***]The present petition impleaded the Court of Appeals as respondent. Under Rule 45, Section 4 of the 1997 Rules of Civil Procedure, the petition maybe filed without impleading the lower courts or judges thereof as petitioners or respondents. Hence, the CA was deleted as party herein.

[1]Penned by Justice Romeo A. Brawner (former Presiding Justice of the CA) as concurred in by Justices Remedios Salazar-Fernando and Rebecca De Guia-Salvador of the 15th Division of the Court of Appeals; Rollo, pp. 80-86.

[2] The case was heard and decided by LA Quintin Mendoza.

[3] Rollo, pp. 139-147.

[4] Rollo, pp. 198-210.

[5] Id., pp. 207-208.

[6]CA-G.R. SP No. 51223.

[7] Rollo, p. 85.

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