

**ALEXANDER R. LOPEZ, HERMINIO D. PEÑA, SALVADOR T. ABUEL,
GEORGE F. CABRERA, JOEL M. CARREON, DAMASO M. CERVANTEX,
JR., RICARDO V. CUEVAS, ROBERTO S. DAGDAG, IRENEO V. DURAY,
OME...**

G.R. NO. 154472. June 30, 2005

Ponente: TINGA, J.

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TINGA, J.:

Take not from the mouth of labor the bread it has earned.

Thomas Jefferson

The constitutional protection to labor, a uniform feature of the last three Constitutions including the present one, is outstanding in its uniqueness and as a mandate for judicial activism.

This petition asks for the review of the Court of Appeals' Decision[1] in C.A.-G.R. SP NO. 55263 entitled *Alexander R. Lopez, et al. v. Metropolitan Waterworks and Sewerage System*, which affirmed in toto the Civil Service Commission's Resolutions[2] denying petitioners' claim for severance, retirement and terminal leave pay.

By virtue of an Agreement,[3] petitioners were engaged by the Metropolitan Waterworks and Sewerage System (MWSS) as collectors-contractors, wherein the former agreed to collect from the concessionaires of MWSS, charges, fees, assessments of rents for water, sewer and/or plumbing services which the MWSS bills from time to time.[4]

In 1997, MWSS entered into a Concession Agreement with Manila Water Service, Inc. and Benpress-Lyonnaise, wherein the collection of bills was transferred to said private concessionaires, effectively terminating the contracts of service between petitioners and MWSS. Regular employees of the MWSS, except those who had retired or opted to remain with the latter, were absorbed by the concessionaires. Regular employees of the MWSS were paid their retirement benefits, but not petitioners. Instead, they were refused said benefits, MWSS relying on a resolution[5] of the Civil Service Commission (CSC) that contract-collectors of the MWSS are not its employees and therefore not entitled to the benefits due regular government employees.

Petitioners filed a complaint with the CSC. In its Resolution dated 1 July 1999,[6] the CSC denied their claims, stating that petitioners were engaged by MWSS through a contract of service, which explicitly provides that a bill collector-contractor is not an MWSS employee.[7] Relying on Part V of CSC Memorandum Circular No. 38, Series of 1993, the CSC stated that contract services/job orders are not considered government services, which do not have to be submitted to the CSC for approval, unlike contractual and plantilla appointments.[8] Moreover, it found that petitioners were unable to show that they have contractual appointments duly attested by the CSC.[9] In addition, the CSC stated that petitioners, not being permanent employees of MWSS and not included in the list submitted to the concessionaire, are not entitled to severance pay.[10] Petitioners' claims for retirement benefits

and terminal leave pay were likewise denied.

Petitioners sought reconsideration of the CSC Resolution, which was however denied by the CSC on 17 September 1999.[11] According to the CSC, petitioners failed to present any proof that their appointments were contractual appointments submitted to the CSC for its approval.[12] The CSC held, thus:

WHEREFORE, the motion for Reconsideration of Alexander Lopez, et al. is hereby denied. Accordingly, CSC Resolution No. 99-1384 dated July 1, 1999 stands. However, this is not without prejudice to whatever rights and benefits they may have under the New Labor Code and other laws, if any.[13]

Aggrieved, petitioners filed a petition for review under Rule 43 of the Rules of Court with the Court of Appeals.[14] In its Decision, the Court of Appeals narrowed down the issues presented by petitioners as follows: Whether or not the CSC erred in finding that petitioners are not contractual employees of the government and, hence, are not entitled to retirement and separation benefits.[15]

Affirming and generally reiterating the ruling of the CSC, the Court of Appeals held that the Agreement entered into by petitioners and MWSS was clear and unambiguous, and should be read and interpreted according to its literal sense.[16] Hence, as per the terms of the agreement, petitioners were not MWSS employees. The Court of Appeals held that no other evidence was adduced by petitioners to substantiate their claim that their papers were forwarded to the CSC for attestation and approval.[17] It added that in any event, as early as 26 June 1996, the CSC specifically stated that “contract collectors are not MWSS employees and therefore not entitled to severance pay.”[18]

The Court of Appeals held that petitioners are not similarly situated as the petitioner in the case of *Chua v. Civil Service Commission*[19] since the contractual appointment was submitted to and approved by the CSC, while the former were not.[20] Further, petitioners do not have creditable service for purposes of retirement, since their services were not supported by duly approved appointments.[21] Lastly, the Court of Appeals held that petitioners were exempt from compulsory membership in the GSIS. Having made no monthly contributions remitted to the said office, petitioners are not entitled to the separation and/or retirement benefits that they are claiming.[22]

Petitioners now assert that the Court of Appeals rendered a decision not in accord with law and applicable jurisprudence, based on misapprehension of facts, and/or contrary to the evidence on record.[23]

Petitioners allege that while their hiring was made to appear to be on contractual basis, the contracts evidencing such hiring were submitted to and approved by the CSC. Later contracts, however, do not appear to have been submitted to the CSC for approval. To support its claim, petitioners presented two (2) sample agreements,[24] both stamped “approved” and signed by CSC Regional Directors. While styled as individual contracts/agreements, petitioners insist that the same were actually treated by the MWSS as appointment papers.[25]

Petitioners claim that they were employees of the MWSS, and that the latter exercised control over them. They cite as manifestations of control the training requirements, the mandated procedures to be followed in making collections, MWSS’ close monitoring of their performance, as well as the latter’s power to transfer collectors from one branch to another.[26]

Moreover, they add that with the nature and extent of their work at the MWSS, they served as collectors of MWSS only.[27] They stress that they have never provided collection services to customers as an independent business. In fact, they applied individually and were hired by MWSS one by one.[28] They were provided with uniforms and identification cards, and received basic pay termed as “commissions” from which MWSS deducted withholding tax.[29] The “commissions” were determined or computed by MWSS and paid to the collectors by

payroll every fifteenth (15th) and last day of every month. In addition to the commission, collectors were given, among others, performance, mid-year and anniversary bonuses, hazard pay, thirteenth (13th) month pay, traveling allowance, cash gift, meal allowance and productivity pay.[30]

Petitioners claim that bill collectors were historically regarded as employees of National Waterworks and Sewerage Authority (NAWASA), the forerunner of MWSS.[31] They cite the case of National Waterworks and Sewerage Authority v. NWSA Consolidated Labor Unions, et al.,[32] wherein this Court supposedly declared the bill collectors of NAWASA as its employees and the commissions received by said collectors as salary.[33] Likewise, they claim that by MWSS' own acts, petitioners were its employees. To support this contention, they point to the identification cards (I.D.s) and certifications of employment issued by MWSS in their favor.[34] There were also "Records of Appointment", which referred to the contract-collectors as employees with corresponding service records.[35]

In view of the cited documents, petitioners assert that MWSS is estopped from denying their employment with the agency.[36] Should there be doubt as to their status as employees, petitioners invoke the rule of liberal construction in favor of labor, and the constitutional policy of protection to labor.[37]

To further strengthen their case, petitioners refer to CSC Resolution 92-2008 dated 8 December 1992, which states in part:

. . . . The fact that they were being hired directly and paid on commission basis by MWSS itself is indicative that they are government employees and should be entitled to the incentive awards.

WHEREFORE, foregoing premises considered, the Commission resolves to rule that the Contractual-Collectors of the Metropolitan Waterworks and Sewerage System (MWSS) are entitled to loyalty awards.[38]

The same resolution was made the basis of the MWSS' memorandum declaring contract-collectors government employees or personnel entitled to salary increases pursuant to the Salary Standardization Law I & II.[39]

Thus, petitioners claim that by MWSS' and CSC's own acts and declarations, they were made to believe that they were employees of MWSS and as such were government employees.[40]

Petitioners invoke the case of Chua v. Civil Service Commission, et al.[41] wherein Chua, a co-terminus employee of the National Irrigation Administration, sought to recover early retirement benefits but was denied the same. This Court, having observed that Chua was hired and re-hired in four (4) successive projects during a span of fifteen (15) years, was deemed a regular employee for purposes of retirement pay. Petitioners argue that in the same manner, in view of their considerable length of service to MWSS, they are entitled to their claimed benefits.[42]

In addition to the retirement/separation/terminal leave pay prayed for, petitioners claim moral damages for the alleged serious disturbance they suffered as a result of the denial of their claims. They also pray for the award of attorney's fees.[43]

For its part, the MWSS avers that the Court of Appeals did not err in sustaining the resolutions of the CSC denying petitioners' claim for entitlement to severance, retirement and terminal leave pay.

MWSS denies the existence of employer-employee relationship between itself and petitioners. Citing CSC Memorandum Circular No. 38 Series of 1993, MWSS avers that it has the authority to contract the services of another who is considered not its employee.[44] With respect to the matter of payment of wages, MWSS states that the commission given to petitioners does not fall within the definition of compensation as provided in

Presidential Degree No. 1146 (P.D. 1146),^[45] or in the definition of the term under the Revised Administrative Code either.^[46]

It adds that the issuance of I.D.s., certificates of recognition and loyalty awards as well as the grounds for termination of the Agreement could hardly be considered as control as the same had no relation to the means and methods to be employed by petitioners in collecting payments for MWSS.^[47] As for the training and orientation undergone by petitioners, MWSS claims that it is but logical for any entity which has contracted the services of another to orient the latter before actual performance of the service, more so if the entity's function is impressed with public service. The fact that collectors were given a regular time for remittance should likewise not be considered as a form of control. MWSS states that none of these requirements invades the collector's prerogative to adopt their own method/strategy in the matter of collection.^[48]

On the grant of thirteenth (13th) month pay and other benefits to petitioners, MWSS claims that these were mere acts of benevolence and generosity.^[49]

Pertinently, therefore, the issue to be resolved is whether or not petitioners were employees of the MWSS and, consequently, entitled to the benefits they claim.

We find for the petitioners.

The Court has invariably affirmed that it will not hesitate to tilt the scales of justice to the labor class for no less than the Constitution dictates that "the State . . . shall protect the rights of workers and promote their welfare."^[50] It is committed to this policy and has always been quick to rise to defense in the rights of labor, as in this case.^[51]

Protection to labor, it has been said, extends to all of labor³⁴local and overseas, organized and unorganized, in the public and private sectors.^[52] Besides, there is no reason not to apply this principle in favor of workers in the government. The government, including government-owned and controlled corporations, as employers, should set the example in upholding the rights and interests of the working class.

The MWSS is a government owned and controlled corporation with its own charter, Republic Act No. 6234.^[53] As such, it is covered by the civil service^[54] and falls under the jurisdiction of the Civil Service Commission.^[55]

CSC Memorandum Circular No. 38, Series of 1993, categorically made the distinction between contract of services/job orders and contractual and plantilla appointment, declaring that services rendered under contracts of services and job orders are non-government services which do not have to be submitted to the CSC for approval. This was followed by CSC Memorandum Circular No. 4, Series of 1994, which allowed the crediting of services for purposes of retirement only for such services supported by duly approved appointments. Subsequently, the CSC issued other resolutions applying the above-mentioned circulars, stating that while some functions may have been contracted out by a government agency, the persons contracted are not entitled to the benefits due to regular government employees.^[56]

For purposes of determining the existence of employer-employee relationship, the Court has consistently adhered to the four-fold test, namely: (1) whether the alleged employer has the power of selection and engagement of an employee; (2) whether he has control of the employee with respect to the means and methods by which work is to be accomplished; (3) whether he has the power to dismiss; and (4) whether the employee was paid wages.^[57] Of the four, the control test is the most important element.

A review of the circumstances surrounding the case reveals that petitioners are employees of MWSS. Despite the obvious attempt of MWSS to categorize petitioners as mere service providers, not employees, by entering into

contracts for services, its actuations show that they are its employees, pure and simple. MWSS wielded its power of selection when it contracted with the individual petitioners, undertaking separate contracts or agreements. The same goes true for the power to dismiss. Although termed as causes for termination of the Agreement, a review of the same shows that the grounds indicated therein can similarly be grounds for termination of employment.

Under the Agreement, MWSS may terminate it if the “Collector-Contractor” does or fails to do any of the following:

Article VII – Duration, Termination and Penal Clauses.

. . . .

- (a) Fails to collect at least eighty percent (80%) of bills issued within three (3) months from commencement of this Agreement or ninety percent (90%) within six (6) months after effectivity of this Agreement;
- (b) Erases, alters, or changes any figure on the bills or remittance receipt for purposes of defrauding either the concessioner or the MWSS. In case of termination of his services for any irregularity, there shall be no prejudice against any criminal action for which he may be liable;
- (c) Is discourteous, dishonest, arrogant or his conduct is inimical [sic] to the good name or image of the MWSS;
- (d) Fails to remit collections daily or to return uncollected bills daily; and
- (e) Fails to comply with any of the undertakings as provided for in this Agreement, and the Manual of Procedures mentioned in Article II hereof. [58] (Emphasis Supplied)

On the other hand, the Labor Code enumerates the just causes for termination of employment, thus:

Art.282. Termination by Employer. – An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.

Obviously, failure to collect the payments of customers or remit the collections constitutes neglect of duty. Making erasures, alterations or changing of figures in the fees or collection receipts amounts to fraud. Lack of courtesy, dishonesty and arrogance are practically the same as misconduct.

On the issue of remuneration, MWSS claims that the compensation received by petitioners does not fall under the definition of wages as provided in Section 2(i) of P.D. 1146,[59] which is “the basic pay or salary received by an employee, pursuant to his employment appointments, excluding per diems, bonuses, overtime pay and allowances;” thus petitioners are not its employees. This assertion, however, simply begs the question. The provision is a simple statement of meaning, operating on the a priori premise or presumption that the recipient is already classified as an employee, and does not lay down any basis or standard for determining who are employees and who are not.

On the other hand, relevant and appropriate is the definition of wages in the Labor Code, namely, that it is the remuneration, however designated, for work done or to be done, or for services rendered or to be rendered.[60] The “commissions” due petitioners were based on the bills collected as per the schedule indicated in the Agreement.[61] Significantly, MWSS granted petitioners benefits usually given to employees, to wit: COLA, meal, emergency, and traveling allowances, hazard pay, cash gift, and other bonuses.[62] In an unabashed bid to claim credit for itself, MWSS professes that these additional benefits were its acts of benevolence and generosity.[63] We are not impressed.

Petitioners rendered services to MWSS for which they were paid and given similar benefits due the other employees of MWSS. It is hard to imagine that MWSS was simply moved by the spirit of benevolence and generosity when it granted liberal benefits to petitioners. More so since MWSS is a government owned and controlled corporation created for the “proper operation and maintenance of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems.”[64] Its main function is to provide basic services to the public. The disposition of MWSS’ income is limited to the payment of its contractual and statutory obligations, expansion and development, and for the enhancement of its efficient operation.[65] It was not in a position to distribute hard-earned income of the State merely to give expression to its supposed altruistic impulse, or to disburse funds not otherwise authorized by law or its charter. If MWSS was impelled by some force to give the benefits to petitioners, it must have been the force of good business sense. Obviously, the additional benefits were granted with the same motivation as good managers anywhere else have—to foster a good working relationship with the bill-collectors and incentivize them to raise the high level of their performance even higher.

Now the aspect of control. MWSS makes an issue out of the proviso in the Agreement that specifically denies the existence of employer-employee relationship between it and petitioners. It is axiomatic that the existence of an employer-employee relationship cannot be negated by expressly repudiating it in an agreement and providing therein that the employee is “not an MWSS employee”[66] when the terms of the agreement and the surrounding circumstances show otherwise. The employment status of a person is defined and prescribed by law and not by what the parties say it should be.[67]

In addition, the control test merely calls for the existence of the right to control, and not the exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee, it is enough that the former has a right to wield the power.[68] While petitioners were contract-collectors of MWSS, they were under the latter’s direction as to where and how to perform their collection and were even subject to disciplinary measures. Trainings were in fact conducted to ensure that petitioners are conversant of the procedures of the MWSS.

Contrary to MWSS’ assertion that petitioners were “free to adopt (their) own method/strategy in the matter of collection”,[69] the Agreement clearly provided that the procedure and/or manner of the collection of bills to be followed shall be in accordance with the provisions of the Manual of Procedures. Art. VI of the Agreement states:

Art. II - Procedure of Collection

The procedure and/or manner of the collection of bills to be followed shall be in accordance with Provisions of the Manual of Procedures adopted on November 1, 1968, which is made an integral part of this Agreement as Annex “A.” [70]

Other manifestations of control are evident from the records. The power to transfer or reassign employees is a management prerogative exclusively enjoyed by employers. In this case, MWSS had free reign over the transfer of bill collectors from one branch to another.[71] MWSS also monitored the performance of the petitioners and

determined their efficiency ratings.[72]

MWSS contends that petitioners were free to engage in other occupations and were not limited by the Agreement. Suffice it to say, however, that the control measures installed by MWSS were restrictive enough to limit or even render illusory the other employment options of petitioners as their tasks took up most of their time, they being required to report and remit to MWSS almost twice daily. Interestingly in that regard, under the Agreement petitioners were “allowed” to render overtime work, and were given additional “incentive commission” for work so rendered as long as the same was authorized.[73] Verily, the need to secure MWSS’ authorization before petitioners can render overtime work debunks its claim that they were allowed to work as and when they please. All these indicate that MWSS controlled the working hours of petitioners.

Furthermore, petitioners did not have their own offices nor their own supplies and equipment. MWSS provides them with company stationeries, office space and equipment.[74] Likewise, MWSS comported itself as the employer of petitioners, providing them with I.D.s. and certifications which declared them as employees of MWSS.[75] It also deducted and remitted petitioners’ withholding taxes and Medicare contributions.[76]

Presaging and lending precedential lift to the present adjudication is the recent ruling in *Manila Water Company, Inc. v. Peña*.^[77] In that case, Manila Water Company (Manila Water), a concessionaire of MWSS, individually hired some of the former MWSS bill collectors to perform collection services for three (3) months. Subsequently, the bill collectors formed a corporation, Association Collectors Group, Inc. (ACGI) which was contracted by Manila Water to collect charges. Later, Manila Water asked the collectors to transfer to a newly formed corporation, First Classic Courier Services. Manila Water later terminated its contract with ACGI, as a result of which collectors who opted to remain with ACGI became unemployed. These bill collectors filed a complaint for illegal dismissal and money claims against Manila Water, claiming that they were its employees since all the methods and procedures of their collection were controlled by the latter. On the other hand, Manila Water contended that the bill collectors were employees of ACGI, an independent contractor.^[78]

The Court ruled that the bill collectors were regular employees of Manila Water, debunking the latter’s claim that they worked for an independent contractor corporation, thus:

First, ACGI does not have substantial capitalization or investment in the form of tools, equipment, machineries, work premises, and other materials, to qualify as an independent contractor. While it has an authorized capital stock of P1,000,000.00, only P62,500.00 is actually paid-in, which cannot be considered substantial capitalization. The 121 collectors subscribed to four shares each and paid only the amount of P625.00 in order to comply with the incorporation requirements. Further, private respondents reported daily to the branch office of the petitioner because ACGI has no office or work premises. In fact, the corporate address of ACGI was the residence of its president, Mr. Herminio D. Peña. Moreover, in dealing with the consumers, private respondents used the receipts and identification cards issued by petitioner.

Second, the work of the private respondents was directly related to the principal business or operation of the petitioner. Being in the business of providing water to the consumers in the East Zone, the collection of the charges therefor by private respondents for the petitioner can only be categorized as clearly related to, and in the pursuit of the latter’s business.

Lastly, ACGI did not carry on an independent business or undertake the performance of its service contract according to its own manner and method, free from the control and supervision of its principal, petitioner. Prior to private respondents’ alleged employment with ACGI, they were already working for petitioner, subject to its rules and regulations in regard to the manner and method of performing their tasks. This form of control and supervision never changed although they were already under the seeming employ of ACGI. Petitioner issued memoranda regarding the billing methods and distribution of books to the collectors; it required private

respondents to report daily and to remit their collections on the same day to the branch office or to deposit them with Bank of the Philippine Islands; it monitored strictly their attendance as when a collector cannot perform his daily collection, he must notify petitioner or the branch office in the morning of the day that he will be absent; and although it was ACGI which ultimately disciplined private respondents, the penalty to be imposed was dictated by petitioner as shown in the letters it sent to ACGI specifying the penalties to be meted on the erring private respondents. These are indications that ACGI was not left alone in the supervision and control of its alleged employees. Consequently, it can be concluded that ACGI was not an independent contractor since it did not carry a distinct business free from the control and supervision of petitioner.[79]

Even under the “four-fold test”, the bill collectors proved to be employees of Manila Water. Thus, the Court held that:

Even the “four-fold test” will show that petitioner is the employer of private respondents. The elements to determine the existence of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer’s power to control the employee’s conduct. The most important element is the employer’s control of the employee’s conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it.

We agree with the Labor Arbiter that in the three stages of private respondents’ services with the petitioner, i.e., (1) from August 1, 1997 to August 31, 1997; (2) from September 1, 1997 to November 30, 1997; and (3) from December 1, 1997 to February 8, 1999, the latter exercised control and supervision over the formers’ conduct.

Petitioner contends that the employment of private respondents from August 1, 1997 to August 30, 1997 was only temporary and done to accommodate their request to be absorbed since petitioner was still undergoing a transition period. It was only when its business became settled that petitioner employed private respondents for a fixed term of three months.

Although petitioner was not obliged to absorb the private respondents, by engaging their services, paying their wages in the form of commission, subjecting them to its rules and imposing punishment in case of breach thereof, and controlling not only the end result but the manner of achieving the same as well, an employment relationship existed between them.

Notably, private respondents performed activities which were necessary or desirable to its principal trade or business. Thus, they were regular employees of petitioner, regardless of whether the engagement was merely an accommodation of their request....[80] (Emphasis Ours)

In fine, the Court found that the so-called independent contractor did not have substantial capitalization or investment in the form of tools, equipment, machineries, work premises and other material to qualify as an independent contractor. Moreover, respondents therein reported daily to the Manila Water branch office and dealt with the consumers through receipts and I.D.s. issued by the latter. Likewise, their work was directly related to and in the pursuit of Manila Water’s principal business. More importantly, the Court noted that ACGI did not carry a distinct business free from the control and supervision of Manila Water.

The similarity between this case and the instant petition cannot be denied. For one, the respondents in said case are petitioners in this case.[81] Second, the work set-up was essentially the same. While the bill collectors were individually hired, or eventually engaged through ACGI, they were under the direct control and supervision of the concessionaire, much like the arrangement between herein petitioners and MWSS. Third, they performed the same vital function of collection in both cases. Fourth, they worked exclusively for their employers. Hence, the bill collectors in the Manila Water case were declared employees of Manila Water despite the existence of a sham labor contractor. In the present case, petitioners were directly and individually hired by MWSS, the latter not resorting to the intermediary labor contractor artifice, but a mere a scrap of paper impudently declaring the bill

collectors to be not employees of MWSS. With greater reason, therefore, should the actuality of the employer-employee relationship between MWSS and petitioners be recognized.

The CSC, as well as the Court of Appeals, makes much of CSC Memorandum Circular No. 38, Series of 1993, which distinguishes between contract of services/job services and contractual appointment. The Circular provides:

Contract of Services and Job Orders are different from Contractual appointment and Plantilla appointment of casual employees, respectively, which are required to be submitted to CSC for approval.

Contracts of Services and Job Orders refer to employment described as follows:

- The contract covers lump sum work or services such as janitorial, security or consultancy services where no employer-employee relationship exist;
- The job order covers piece of work or intermittent job of short duration not exceeding six months on a daily basis;
- The contract of services and job orders are not covered by Civil Service Law, Rules and Regulations; [sic] but covered by COA rules;
- The employees involved in the contracts or job orders do not enjoy the benefits enjoined by government employees, such as PERA, COLA and RATA.
- As the services rendered under contracts of services and job orders are not considered government services, they do not have to be submitted to the Civil Service Commission for approval.[82]

Clinging to its tenuous denial of petitioners' employee status, the CSC avers that contractual employees are those with contractual appointment submitted to and attested by the CSC, unlike petitioners who failed to show that their appointments were duly attested by the CSC. The Court recognizes the authority of the CSC in promulgating circulars and memoranda concerning the civil service sector in line with its function as the central personnel agency of the Government.[83] Nevertheless, it cannot turn a blind eye to a rather haphazard application and interpretation by the CSC of its own issuance, such as in this case.

A careful review of the above-quoted circular shows that the relationship defined by the Agreement cannot fall within the purview of contract of services or job orders. Payments made by MWSS' subscribers are the lifeblood of the company. Viewed in that context the work rendered by the petitioners is essential to the company's survival and growth. Alongside its public service thrust, the MWSS is an income-generating entity for the Government. It relies for the most part on the bill collections in order to sustain its operations. The task of collecting payments for the water supplied by the MWSS to its consumers does not deserve to be compared with mere janitorial, security or even consultancy work. It is not intermittent and seasonal, but rather continuous and increasing by reason of its indisputable essentiality. To lump petitioners with the run-of-the-mill service providers is to ignore the vital role they perform for the MWSS. Rightly so, as clearly indicated in the circular, employees involved in the contracts or job orders do not enjoy the benefits enjoyed by the petitioners which are the same benefits given to government employees.

Petitioners are indeed regular employees of the MWSS. The primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Likewise, the repeated and continuing need for the performance of the job has been deemed sufficient evidence of the necessity, if not indispensability of the activity to the business.[84] Some of the petitioners had rendered more than two decades of service to the MWSS. The continuous and repeated rehiring of these bill collectors indicate the necessity and

desirability of their services, as well as the importance of the role of bill collectors in the MWSS.

We agree with the CSC when it stated that the authority of government agencies to contract services is an authority recognized under civil service rules.[85] However, said authority cannot be used to circumvent the laws and deprive employees of such agencies from receiving what is due them.

The CSC goes further to say that petitioners were unable to present proof that their appointments were contractual in nature and submitted to the CSC for its approval, and that submission to and approval of the CSC are important as these show that their services had been credited as government service.[86] The point is of no moment. Petitioners were able to attach only two of such Agreements which bore the stamp of approval by the CSC and these are simply inadequate to prove that the other agreements were similarly approved. Even petitioners admit that subsequently such Agreements were no longer submitted to the CSC for its approval. Still, the failure to submit the documents for approval of the CSC cannot militate against the existence of employer-employee relationship between petitioners and MWSS. MWSS cannot raise its own inaction to buttress its adverse position.

MWSS committed itself to pay severance and terminal leave pay to its regular employees.[87] The guidelines[88] thereof states that regular employees who have rendered at least a year of service and not eligible for retirement are entitled to severance pay equivalent to one (1) month basic pay for every full year of service.[89] In view of the Court's finding that petitioners were employees of MWSS, the corresponding severance pay, in accordance with the guidelines, should be given to them. Terminal leave pay are likewise due petitioners, provided they meet the requirements therefor.

However, petitioners in this case cannot avail of retirement benefits from the GSIS. When their services were engaged by MWSS, they were not reported as its employees and hence no deductions were made against them for purpose of the GSIS contributions. It would be unjust to grant petitioners retirement benefits when there was no remittance of the employees' or the employer's share of contributions.

The case of *Chua v. Civil Service Commission*[90] relied upon by petitioners is not in point. There was no question that Chua was an employee, specifically a contractual/project employee of the National Irrigation Administration (NIA). The CSC's denial of her request for early retirement benefits was based on the CSC's conclusion that contractual employees are not covered by the Early Retirement Law.[91] This Court held that co-terminus employees who have rendered years of continuous service such as Chua -who was continuously hired and rehired for four (4) successive times in a span of fifteen (15) years-should be included in the coverage of the Early Retirement Law as long as they comply with CSC regulations promulgated for such purpose. Underlying this grant of retirement benefits to Chua is the finding that her work with the NIA was recognized and accredited by the CSC as government service, that she paid her GSIS contributions throughout her service, and the fact that she applied for the benefit within the prescribed period.[92]

The differences between Chua and petitioners are readily apparent. The ruling in Chua concerns claims based on the Early Retirement Law. On the other hand, this case involves bill collectors who were hired by virtue of individual agreements, and who are now claiming payment of retirement, separation and terminal leave benefits. Petitioners' services, admittedly, were not credited/recognized by the CSC. Likewise, the parties still dispute the nature of their relationship when petitioners made the claim for the benefits, unlike in the case of Chua where there was no question as to her status as an employee of the NIA. Moreover, unlike Chua, petitioners in this case did not give any contribution for GSIS coverage, especially since retirement benefits come from the monthly contributions of GSIS members.

Petitioner's claim for damages and attorney's fees are similarly untenable. MWSS cannot be made liable for moral damages for the "serious moral disturbance"[93] petitioners allegedly suffered as a result of the denial of

the requested benefits because it was merely following the earlier resolution[94] of the CSC. MWSS' adherence to the position of the CSC is but logical. It is after all, the central personnel agency of the government, and its resolution at the time was valid and binding on MWSS.

WHEREFORE, the petition is GRANTED IN PART. The Decision of the Court of Appeals in C.A.–G.R. SP No. 55263, as well as the Civil Service Commission's Resolutions Nos. 991384 and 992074, are hereby REVERSED and SET ASIDE. MWSS is ordered to pay terminal leave pay and separation pay and/or severance pay to each of herein petitioners on the basis of remunerations/commissions, allowances and bonuses each were actually receiving at the time of termination of their employment as contract collectors of MWSS. Let the case be remanded to the Civil Service Commission for the computation of the above awards and the appropriate disposition in accordance with the pronouncements in this Decision.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario, and Garcia, JJ., concur.

[1] Promulgated on 26 July 2002 by the Special Third Division, Penned by Justice Josefina Guevara-Salonga, JJ. Bernardo P. Abesamis and Amelita G. Tolentino, concurring; Rollo, pp. 59-72.

[2] Resolution No. 991384 dated 1 July 1999 and Resolution No.992074 dated 17 September 1999; id. at 118-146.

[3] Id. at 248-265.

[4] Art. I of the Agreement, id. at 249.

[5] CSC Resolution No. 981668, 26 June 1996, id. at 291-294

[6] Resolution No. 991384, id. at 118-141.

[7] Id. at 134-135.

[8] Id. at 135-136.

[9] Id. at 136.

[10] Id. at 138.

[11] CSC Resolution No. 992074, id. at 143-146.

[12] Id. at 145.

[13] Id. at 146.

[14] Id. at 74-114.

[15] Id. at 65.

[16] Id. at 67.

[17] Id. at 66-67.

[18] Citing CSC Resolution No. 981668, id. at 69.

[19] G.R. No. 88979, 7 February 1992, 206 SCRA 65.

[20] Id. at 70.

[21] As per Memorandum Circular 04, Series of 1994.

[22] Rollo, p. 71.

[23] Id. at 10.

[24] Agreement dated 2 May 1983 in the name of Edgardo N. Garcia, id. at 248-258; Agreement dated 24 August 1979 in the name of Edilberto C. Pingul, id. at 264-271.

[25] Id. at 14.

[26] Id. at 15-16, 39.

[27] Id. at 34-A.

[28] Id. at 34.

[29] Id. at 16-17.

[30] Per certification of one branch manager dated 20 June 1996, id. at 18.

[31] Id. at 18.

[32] 128 Phil. 225 (1967).

[33] Rollo, p. 40.

[34] Id. at 16-17.

[35] Id. at 288.

[36] Id. at 42.

[37] Id. at 43.

[38] Id. at 304.

[39] Id. at 232.

[40] Id. at 46.

[41] Supra note 19.

[42] Rollo pp. 52-55.

[43] Id at 55.

[44] Id at 578.

[45] Revised Government Service Insurance Act of 1977. Sec. 2(i) thereof provides: "Compensation- the basic pay or salary received by an employee, pursuant to his employment appointments excluding per diems, bonuses, overtime pay and allowances."

[46] Sec 4, Chapter 1 (Title 1), Book IV, Executive Order No. 292.

[47] Rollo p. 580.

[48] Id at 580.

[49] Id at 582.

[50] Bataan Shipyard and Engineering Corporation v. National Labor Relations Commission, 336 Phil. 193, 205 (1997); Sec. 18, Article II, 1987 Constitution.

[51] Holiday Inn Manila v. National Labor Relations Commission, G.R. No. 109114, 14 September 1993, 226 SCRA 417, 423.

[52] Bernas, The 1987 Constitution of the Republic of the Philippines, A Commentary, (2003), p. 1194, citing II RECORD 614, 693, 748-749; Sec. 3, Article XIII, 1987 Constitution.

[53] An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority; and for Other Purposes.

[54] Sec. 2 (1), Article IX, 1987 Constitution.

[55] Corsiga v. Defensor, 439 Phil. 875, 883 (2002).

[56] Rollo, pp. 136-137.

[57] Tan v. Lagrama, 436 Phil. 191, 201 (2002).

[58] Rollo, pp. 255-256.

[59] See note 45.

[60] Art 97(f), Labor Code.

[61] Rollo pp. 252-253.

[62] Id at 263.

[63] Id at 582.

[64] Section 1, Republic Act No. 6234.

[65] Section 13, id.

[66] Rollo p. 134.

[67] Insular Life Assurance Co. Ltd. V. NLRC, 350 Phil. 919, 926 (1998), citing Industrial Timber Corporation v. NLRC, 169 SCRA 341.

[68] MAM Realty Development Corporation v. NLRC, 314 Phil. 838, 842 (1995).

[69] Rollo p. 580.

[70] Id at 249.

[71] Id at 302.

[72] Id at 268-275.

[73] Id at 254.

[74] Id at 264.

[75] Id at 203-206

[76] Id at 288.

[77] G.R.No.158255, 8 July 2004, 434 SCRA 53.

[78] Id. at 55-56.

[79] Id at 60-61.

[80] Id at 62.

[81] Private respondents in the case are all petitioners in the present petition, to wit: Herminio D. Pena, Esteban B. Baldoza, Jorge D. Canonigo, Jr., Ike S. Delfin, Rizalino M. Intal, Rey T. Manlegro, John L. Marteja, Marlon B. Morada, Allan D. Espina, Eduardo Ong, Agnesio D. Quebral, Edmundo B. Victa, Victor C. Zafaralla, Edilberto C. Pingul, and Federico M. Rivera.

[82] Quoted in CSC Resolution No. 991384, Rollo, pp. 135-136.

[83] Sec. 3, Article IX, 1987 Constitution.

[84] De Leon v. NLRC, G.R. No. 70705, 21 August 1989, 176 SCRA 615, 621.

[85] Rollo p. 140.

[86] Id at 145.

[87] CSC Resolution No. 991384, quoting the Concession Agreements, id. at 119.

[88] Guidelines in the Payment of the Mandatory Severance Pay Pursuant to Article 6.1 of the Concession Agreement issued by MWSS on 31 July 1997, id. at 401.

[89] Guidelines in the Payment of the Mandatory Severance Pay Pursuant to Article 6.1 of the Concession Agreement issued by MWSS on 31 July 1997, id. at 402.

[90] G.R. No. 88979, 7 February 1992, 206 SCRA 65.

[91] Republic Act No. 6683.

[92] Supra note 85.

[93] Rollo p. 55.

[94] CSC Resolution No. 981668, Supra note 5.

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