OLONGAPO MAINTENANCE SERVICES, INC., PETITIONER, VS. EDGARDO B. CHANTENGCO, SALVACION S. ANIGAN, POLICARPIO S. ANIGAN, NOEL C. MENDOZA, DANIEL VALENTIN, MANUEL T. MARIANO, CARLO...

G.R. NO. 156146. June 21, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

This Petition for Review on Certiorari assails the July 29, 2002 Decision[1] of the Court of Appeals and its Resolution[2] dated November 14, 2002 in CA-G.R. SP No. 67474, which, respectively, denied the petition for certiorari and the motion for reconsideration filed by Olongapo Maintenance Services, Inc. (OMSI).

OMSI is a corporation engaged in the business of providing janitorial and maintenance services to various clients, including government-owned and controlled corporations. On various dates beginning 1986, OMSI hired the respondents as janitors, grass cutters, and degreasers, and assigned them at the Ninoy Aquino International Airport (NAIA). On January 14, 1999, OMSI terminated respondents' employment.

Claiming termination without just cause and non-payment of labor standard benefits, respondents filed a complaint for illegal dismissal, underpayment of wages, and non-payment of holiday and service incentive leave pays, with prayer for payment of separation pay, against OMSI.

For its part, OMSI denied the allegations in the complaint. It averred that when Manila International Airport Authority (MIAA) awarded to OMSI the service contracts for the airport, OMSI hired respondents as janitors, cleaners, and degreasers to do the services under the contracts. OMSI informed the respondents that they were hired for the MIAA project and their employments were coterminous with the contracts. As project employees, they were not dismissed from work but their employments ceased when the MIAA contracts were not renewed upon their expiration. The termination of respondents' employment cannot, thus, be considered illegal.

In a Decision[3] dated November 19, 1999, the Labor Arbiter dismissed the complaint, viz.:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING for lack of merit the claims for separation pay, wage differentials and holiday pay except that respondent is hereby ordered to pay the seventy one (71) complainants listed in pages three and four of the latter's position paper their service incentive leave pay.
>
> SO ORDERED.[4]

On appeal by the respondents, the NLRC modified the Labor Arbiter's ruling. It held that respondents were regular and not project employees. Hence, they are entitled to separation pay:

> WHEREFORE, the decision appealed from is hereby modified by granting in addition to the grant of service incentive leave pay, payment of separation pay equivalent to half-month pay per [every] year of service or one

month pay, whichever is higher.

SO ORDERED.[5]

OMSI sought reconsideration of the ruling, but the NLRC denied the motion on July 30, 2001.

Petitioner went up to the Court of Appeals via a petition for certiorari, imputing grave abuse of discretion to the NLRC for reversing the factual findings and the decision of the Labor Arbiter. However, the Court of Appeals dismissed the petition. The appellate court agreed with the NLRC that the continuous rehiring of respondents, who performed tasks necessary and desirable in the usual business of OMSI, was a clear indication that they were regular, not project employees. The court added that OMSI failed to establish that respondents' employment had been fixed for a specific project or undertaking, the completion or termination of which had been determined at the time of their engagement or hiring. Neither had it shown that respondents were informed of the duration and scope of their work when they were hired. Furthermore, OMSI did not submit to the Department of Labor and Employment (DOLE) reports of termination of the respondents, thereby bolstering respondents' claim of regular employment. OMSI filed a motion for reconsideration, but the Court of Appeals denied it on November 14, 2002.

Aggrieved by the resolutions of the Court of Appeals, OMSI comes to this Court theorizing that:

> THE COURT OF APPEALS COMMITTED GRAVE ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SUSTAINING THE NLRC'S RULING THAT RESPONDENTS ARE NOT PROJECT EMPLOYEES. CONCOMITANT THERETO, THERE IS NEITHER FACTUAL NOR LEGAL BASIS FOR THE AWARD OF SEPARATION PAY.[6]

OMSI insists that respondents were project employees. Respondents, on the other hand, maintain that they were OMSI's regular employees.

Article 280 of the Labor Code provides:

> ART. 280. Regular and Casual Employment. - 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 the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season . . . (Italics supplied.)

Without question, respondents, as janitors, grass cutters, and degreasers, performed work "necessary or desirable" in the janitorial and maintenance service business of OMSI.

OMSI, however, argues that the respondents' performance of activities necessary and desirable to its business does not necessarily and conclusively mean that respondents were regular employees. OMSI asserts that respondents were project employees and their employment was coterminous with OMSI's service contracts with the MIAA. Thus, when the service contracts were terminated and the respondents were not re-assigned to another project, OMSI cannot be held liable for illegal dismissal.

The argument does not persuade.

The principal test in determining whether an employee is a project employee is whether he/she is assigned to carry out a "specific project or undertaking," the duration and scope of which are specified at the time the employee is engaged in the project,[7] or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.[8] A true project employee should be assigned to a project which begins and

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ends at determined or determinable times, and be informed thereof at the time of hiring.[9]

In the instant case, the record is bereft of proof that the respondents' engagement as project employees has been predetermined, as required by law. We agree with the Court of Appeals that OMSI did not provide convincing evidence that respondents were informed that they were to be assigned to a "specific project or undertaking" when OMSI hired them. Notably, the employment contracts for the specific project signed by the respondents were never presented. All that OMSI submitted in the proceedings a quo are the service contracts between OMSI and the MIAA. Clearly, OMSI utterly failed to establish by substantial evidence that, indeed, respondents were project employees and their employment was coterminous with the MIAA contract.

Evidently cognizant of such neglect, OMSI attempted to correct the situation by attaching copies of the application forms[10] of the respondents to its motion for reconsideration of the Court of Appeals' Decision. Such practice cannot be tolerated. This practice of submitting evidence late is properly rejected as it defeats the speedy administration of justice involving poor workers. It is also unfair.[11]

OMSI's reliance on Mamansag v. National Labor Relations Commission,[12] Cartagenas v. Romago Electric Company, Inc.,[13] and Sandoval Shipyards, Inc. v. National Labor Relations Commission[14] is misplaced. Said cases are not on all fours with the case at bench.

In Mamansag, Consumer Pulse Inc. duly presented the contract of employment showing that Mamansag was hired for a specific project and the completion or termination of said project was determined at the start of the employment. In Cartagenas, documentary exhibits were offered showing that the employee had been issued appointments from project to project and was issued a notice of temporary lay-off when the project was suspended due to lack of funds. Finally, in the case of Sandoval Shipyards, the termination of the project employees was duly reported to the then Ministry of Labor and Employment. These circumstances are not true in OMSI's case. As mentioned, no convincing evidence was offered to prove that respondents were informed that they were to be assigned to a "specific project or undertaking." Also, OMSI never reported respondents' termination to the then Department of Labor and Employment (DOLE). In Philippine Long Distance Telephone Co. v. Ylagan,[15] we held that the failure of the employee to file termination reports was an indication that an employee was not a project but a regular employee.

In termination cases, the burden of proof rests on the employer to show that the dismissal is for a just cause. Thus, employers who hire project employees are mandated to state and, once its veracity is challenged, to prove the actual basis for the latter's dismissal.[16] Unfortunately for OMSI, it failed to discharge the burden. All that we have is OMSI's self-serving assertion that the respondents were hired as project employees.

Having been illegally dismissed, the NLRC cannot be considered to have acted whimsically in granting respondents separation pay in lieu of their reinstatement. Accordingly, the Court of Appeals committed no reversible error nor grave abuse of discretion in denying OMSI's petition for certiorari.

WHEREFORE, the petition for review is DENIED and the assailed Decision and Resolution of the Court of Appeals are AFFIRMED.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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[1] Annex "A," rollo, pp. 31-40.

[2] Annex "B," id. at 41.

[3] Annex "F," id. at 62-69.

[4] Id. at 69.

[5] Annex "H," id. at 80.

[6] Memorandum, id. at 137.

[7] Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission, G.R. No. 152427, August 9, 2005, 466 SCRA 265, 271.

[8] Liganza v. RBL Shipyard Corporation, G.R. No. 159862, October 17, 2006, 504 SCRA 678, 683.

[9] PLDT v. Ylagan, G.R. No. 155645, November 24, 2006.

[10] CA rollo, pp. 183-207.

[11] Big AA Manufacturer v. Antonio, G.R. No. 160854, March 3, 2006, 484 SCRA 33, 43.

[12] G.R. No. 97520, February 9, 1992, 218 SCRA 722.

[13] G.R. No. 82973, September 15, 1989, 177 SCRA 637.

[14] G.R. Nos. L-65689 and L-66119, May 31, 1985, 136 SCRA 674.

[15] Supra note 9.

[16] Liganza v. RBL Shipyard Corporation, supra note 8, at 687.

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