

KIMBERLY-CLARK (PHILS.), INC., PETITIONER, VS. SECRETARY OF LABOR, AMBROCIO GRAVADOR, ENRICO PILI, PAQUITO GILBUENA, ROBERTO DEL MUNDO, ALMARIO ROMINQUIT, ANTONIO BALANO, RIZALD...

G.R. No. 156668. November 23, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the June 27, 2002 Decision[1] of the appellate court in CA-G.R. SP No. 62257, and the January 8, 2003 Resolution[2] denying the motion for reconsideration thereof.

On the recommendation of the Division Clerk of Court and in the interest of orderly administration of justice, the Court initially consolidated this case with G.R. Nos. 149158-59 entitled *Kimberly Independent Labor Union for Solidarity Activism and Nationalism (KILUSAN)-Organized Labor Associations in Line Industries and Agriculture (OLALIA), et al. v. Court of Appeals, et al.* We, however, already disposed of the issue in G.R. Nos. 149158-59 in the Court's Resolution promulgated on July 24, 2007.[3] Left for the Court to resolve then are the matters raised in the instant petition.

We pertinently quote from the said July 24, 2007 Resolution the facts, thus:

On June 30, 1986, the Collective Bargaining Agreement (CBA) executed by and between Kimberly-Clark (Phils.), Inc., (Kimberly), a Philippine-registered corporation engaged in the manufacture, distribution, sale and exportation of paper products, and United Kimberly-Clark Employees Union-Philippine Transport and General Workers' Organization (UKCEO-PTGWO) expired. Within the freedom period, on April 21, 1986, KILUSAN-OLALIA, then a newly-formed labor organization, challenged the incumbency of UKCEO-PTGWO, by filing a petition for certification election with the Ministry (now Department) of Labor and Employment (MOLE), Regional Office No. IV, Quezon City.

A certification election was subsequently conducted on July 1, 1986 with UKCEO-PTGWO winning by a margin of 20 votes over KILUSAN-OLALIA. Remaining as uncounted were 64 challenged ballots cast by 64 casual workers whose regularization was in question. KILUSAN-OLALIA filed a protest.

On November 13, 1986, MOLE issued an Order stating, among others, that the casual workers not performing janitorial and yard maintenance services had attained regular status on even date. UKCEO-PTGWO was then declared as the exclusive bargaining representative of Kimberly's employees, having garnered the highest number of votes in the certification election.

On March 16, 1987, KILUSAN-OLALIA filed with this Court a petition for certiorari which was docketed as G.R. No. 77629 assailing the Order of the MOLE with prayer for a temporary restraining order (TRO).

During the pendency of G.R. No. 77629, Kimberly dismissed from service several employees and refused to heed the workers' grievances, impelling KILUSAN-OLALIA to stage a strike on May 17, 1987. Kimberly

filed an injunction case with the National Labor Relations Commission (NLRC), which prompted the latter to issue temporary restraining orders (TRO's). The propriety of the issuance of the TRO's was again brought by KILUSAN-OLALIA to this Court via a petition for certiorari and prohibition which was docketed as G.R. No. 78791.

G.R. Nos. 77629 and 78791 were eventually consolidated by this Court and decided on May 9, 1990. The dispositive portion of the decision reads as follows:

WHEREFORE, judgment is hereby rendered in G.R. No. 77629:

- Ordering the med-arbiter in Case No. R04-OD-M-4-15-86 to open and count the 64 challenged votes, and that the union with the highest number of votes be thereafter declared as the duly elected certified bargaining representative of the regular employees of KIMBERLY;

- Ordering KIMBERLY to pay the workers who have been regularized their differential pay with respect to minimum wage, cost of living allowance, 13th month pay, and benefits provided for under the applicable collective bargaining agreement from the time they became regular employees.

All other aspects of the decision appealed from, which are not so modified or affected thereby, are hereby AFFIRMED. The temporary restraining order issued in G.R. No. 77629 is hereby made permanent.

The petition filed in G.R. No. 78791 is hereby DISMISSED.

SO ORDERED.

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On the Decision of the Court dated May 9, 1990, KILUSAN-OLALIA and 76 individual complainants filed a motion for execution with the DOLE (formerly MOLE). In an Order issued on June 29, 2000, the DOLE considered as physically impossible, and moot and academic the opening and counting of the 64 challenged ballots because they could no longer be located despite diligent efforts, and KILUSAN-OLALIA no longer actively participated when the company went through another CBA cycle. However, the DOLE ordered the payment of the differential wages and other benefits of the regularized workers, to wit:

ACCORDINGLY, let a partial writ of execution issue to enforce payment of the sum of (sic) P576,510.57 to the 22 individual workers listed in ANNEX A of Kimberly's Comment/Reply dated 31 October 1991 representing their differential pay with respect to the minimum wage, cost of living allowance, 13th month pay and benefits provided under the applicable collective bargaining agreement from the time they became regular employees as above-indicated.

Further, the Bureau of Working Conditions is hereby directed to submit, within twenty (20) days from receipt of this Order, a list of workers who have been regularized and the corresponding benefits owing to them from the time they became regular employees.

SO ORDERED.

Pursuant thereto, on August 1, 2000, the Bureau of Working Conditions (BWC) submitted its report finding 47 out of the 76 complainants as entitled to be regularized.

Kimberly filed a motion for reconsideration of the DOLE Order as well as the BWC Report, arguing in the main that the decision in G.R. Nos. 77629 and 78791 only pertained to casuals who had rendered one year of service as of April 21, 1986, the filing date of KILUSAN-OLALIA's petition for certification election. On December 6, 2000, however, the DOLE denied the motion, disposing of it as follows:

WHEREFORE, the motion for reconsideration filed by the COMPANY is hereby DENIED for lack of merit.

No further motion of the same nature shall be entertained. Further, the Report of computation submitted by the Bureau of Working Conditions is hereby APPROVED and made an integral part of this Order.

Let a writ of execution be issued immediately.

SO ORDERED.

Kimberly, steadfast in its stand, filed a petition for certiorari before the appellate court, which was docketed as CA-G.R. SP No. 62257 alleging that the employees who were dismissed due to the illegal strike staged on May 17, 1987 (the subject of G.R. Nos. 149158-59) should not be awarded regularization differentials.

On June 27, 2002, the CA dismissed Kimberly's petition, and disposed of the case as follows:

WHEREFORE, the instant petition is DISMISSED for failure to show grave abuse of discretion. The questioned orders dated June 29, 2000 and December 6, 2000 of the Secretary of Labor are AFFIRMED. Costs against petitioners.

SO ORDERED.

With the denial of its motion for reconsideration, Kimberly elevated the case before this Court, on the following grounds:

- The Court of Appeals committed serious error in affirming the ruling of the Secretary of Labor that even casual employees who had not rendered one year of service were considered regular employees, thereby nullifying and disregarding the Honorable Court's Decision dated May 9, 1990 that only casual employees who had rendered at least one (1) year of service were considered regular employees.
- The Court of Appeals also gravely erred in upholding the ruling of Labor Secretary that persons not party to the petition in G.R. No. 77629 were entitled to regularization differentials, thereby amending the Honorable Court's decision.[4]

Kimberly, in this case, contends that the reckoning point in determining who among its casual employees are entitled to regularization should be April 21, 1986, the date KILUSAN-OLALIA filed a petition for certification election to challenge the incumbency of UKCEO-PTGWO. It posits that in the implementation of the May 9, 1990 Decision in G.R. No. 77629,[5] the DOLE should then exclude the employees who had not rendered at least one (1) year of service from the said date.[6]

Kimberly also argues that the employees who are not parties in G.R. No. 77629 should not be included in the implementation orders. For DOLE to declare this group of employees as regular and to order the payment of differential pay to them is to amend a final and executory decision of this Court.[7]

We do not agree. In G.R. No. 77629, we ruled as follows:

The law [thus] provides for two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed. The individual petitioners herein who have been adjudged to be regular employees fall under the second category. These are the mechanics, electricians, machinists, machine shop helpers, warehouse helpers, painters, carpenters, pipefitters and masons. It is not disputed that these workers have been in the employ of KIMBERLY for more than one year at the time of the filing of the petition for certification election by KILUSAN-OLALIA.

Owing to their length of service with the company, these workers became regular employees, by operation of law, one year after they were employed by KIMBERLY through RANK. While the actual regularization of

these employees entails the mechanical act of issuing regular appointment papers and compliance with such other operating procedures as may be adopted by the employer, it is more in keeping with the intent and spirit of the law to rule that the status of regular employment attaches to the casual worker on the day immediately after the end of his first year of service. To rule otherwise, and to instead make their regularization dependent on the happening of some contingency or the fulfillment of certain requirements, is to impose a burden on the employee which is not sanctioned by law.

That the first stated position is the situation contemplated and sanctioned by law is further enhanced by the absence of a statutory limitation before regular status can be acquired by a casual employee. The law is explicit. As long as the employee has rendered at least one year of service, he becomes a regular employee with respect to the activity in which he is employed. The law does not provide the qualification that the employee must first be issued a regular appointment or must first be formally declared as such before he can acquire a regular status. Obviously, where the law does not distinguish, no distinction should be drawn.[8]

Considering that an employee becomes regular with respect to the activity in which he is employed one year after he is employed, the reckoning date for determining his regularization is his hiring date. Therefore, it is error for petitioner Kimberly to claim that it is from April 21, 1986 that the one-year period should be counted. While it is a fact that the issue of regularization came about only when KILUSAN-OLALIA filed a petition for certification election, the concerned employees attained regular status by operation of law.[9]

Further, the grant of the benefit of regularization should not be limited to the employees who questioned their status before the labor tribunal/court and asserted their rights; it should also extend to those similarly situated.[10] There is, thus, no merit in petitioner's contention that only those who presented their circumstances of employment to the courts are entitled to regularization.[11]

As to Kimberly's assertions that some of the employees were already recalled, reassigned or replaced by the RANK Manpower Services, and that some did not return to work, the Court notes that these are questions of fact. Basic is the rule that, in petitions for review on certiorari under Rule 45 of the Rules of Court, only questions of law may be raised,[12] except, if the factual findings of the appellate court are mistaken, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the court of origin,[13] which is not so in the instant case. The DOLE and the appellate court herein are uniform in their findings.

Finally, oft-repeated is the rule that appellate courts accord the factual findings of the labor tribunal not only respect but also finality when supported by substantial evidence,[14] unless there is showing that the labor tribunal arbitrarily disregarded evidence before it or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated.[15] Likewise, the appellate court cannot substitute its own judgment or criterion for that of the labor tribunal in determining wherein lies the weight of evidence or what evidence is entitled to belief.[16]

WHEREFORE, premises considered, the petition for review on certiorari is DENIED DUE COURSE.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Eugenio S. Labitoria (retired), with Associate Justices Juan Q. Enriquez, Jr. and Mariano C. del Castillo concurring; rollo, pp. 42-51.

[2] Id. at 53-54.

[3] Id. at 192-210. In the said Resolution, the Court ordered the de-consolidation of the cases for they do not involve a common question of law. After resolving the procedural issues raised in G.R. Nos. 149158-59, the Court remanded the said cases to the Court of Appeals for adjudication on the merits.

[4] Id. at 195-205.

[5] Kimberly Independent Labor Union for Solidarity, Activism and Nationalism-Organized Labor Association In Line Industries and Agriculture v. Drilon, G.R. Nos. 77629 and 78791, May 9, 1990, 185 SCRA 190.

[6] Rollo, pp. 28-32.

[7] Id. at 33-35.

[8] Kimberly Independent Labor Union for Solidarity, Activism and Nationalism-Organized Labor Association In Line Industries and Agriculture v. Drilon, *supra* note 5, at 203-204.

[9] ABS-CBN Broadcasting Corporation v. Nazareno, G.R. No. 164156, September 26, 2006, 503 SCRA 204, 228; Philips Semiconductors (Phils.), Inc. v. Fadriquela, G.R. No. 141717, April 14, 2004, 427 SCRA 408, 420.

[10] San Miguel Corporation v. National Labor Relations Commission, G.R. No. 147566, December 6, 2006, 510 SCRA 181, 190-192.

[11] Rollo, p. 35.

[12] Telefunken Semiconductors Employees Union v. Court of Appeals, 401 Phil. 776, 791 (2000).

[13] Gau Sheng Phils., Inc. v. Joaquin, G.R. No. 144665, September 8, 2004, 437 SCRA 608, 616.

[14] Sonza v. ABS-CBN Broadcasting Corporation, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 594.

[15] Mendoza, Jr. v. San Miguel Foods, Inc., G.R. No. 158684, May 16, 2005, 458 SCRA 664, 682-683; Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering, 460 Phil. 583, 591 (2003); University of the Immaculate Concepcion v. U.I.C. Teaching and Non-Teaching Personnel and Employees Union, 414 Phil. 522, 534 (2001).

[16] Domasig v. National Labor Relations Commission, 330 Phil. 518, 524 (1996).

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