

MANILA WATER COMPANY, INC., PETITIONER, VS. HERMINIO D. PENA, ESTEBAN B. BALDOZA, JORGE D. CANONIGO, JR., IKE S. DELFIN, RIZALINO M. INTAL, REY T. MANLEGRO, JOHN L. MARTEJA, MAR...

G.R. No. 158255. July 08, 2004

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition assails the decision[1] of the Court of Appeals dated November 29, 2002, in CA-G.R. SP No. 67134, which reversed the decision of the National Labor Relations Commission and reinstated the decision of the Labor Arbiter with modification.

Petitioner Manila Water Company, Inc. is one of the two private concessionaires contracted by the Metropolitan Waterworks and Sewerage System (MWSS) to manage the water distribution system in the East Zone of Metro Manila, pursuant to Republic Act No. 8041, otherwise known as the National Water Crisis Act of 1995. Under the Concession Agreement, petitioner undertook to absorb former employees of the MWSS whose names and positions were in the list furnished by the latter, while the employment of those not in the list was terminated on the day petitioner took over the operation of the East Zone, which was on August 1, 1997. Private respondents, being contractual collectors of the MWSS, were among the 121 employees not included in the list; nevertheless, petitioner engaged their services without written contract from August 1, 1997 to August 31, 1997. Thereafter, on September 1, 1997, they signed a three-month contract to perform collection services for eight branches of petitioner in the East Zone.[2]

Before the end of the three-month contract, the 121 collectors incorporated the Association Collectors Group, Inc. (ACGI),[3] which was contracted by petitioner to collect charges for the Balara Branch. Subsequently, most of the 121 collectors were asked by the petitioner to transfer to the First Classic Courier Services, a newly registered corporation. Only private respondents herein remained with ACGI. Petitioner continued to transact with ACGI to do its collection needs until February 8, 1999, when petitioner terminated its contract with ACGI.[4]

Private respondents filed a complaint for illegal dismissal and money claims against petitioner, contending that they were petitioner's employees as all the methods and procedures of their collections were controlled by the latter.

On the other hand, petitioner asserts that private respondents were employees of ACGI, an independent contractor. It maintained that it had no control and supervision over private respondents' manner of performing their work except as to the results. Thus, petitioner did not have an employer-employee relationship with the private respondents, but only a service contractor-client relationship with ACGI.

On May 31, 2000, Labor Arbiter Eduardo J. Carpio rendered a decision finding the dismissal of private respondents illegal. He held that private respondents were regular employees of petitioner not only because the

tasks performed by them were controlled by it but, also, the tasks were obviously necessary and desirable to petitioner's principal business. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, finding that complainants were employees of respondent [petitioner herein], that they were illegally dismissed, and respondent [petitioner herein] is hereby ordered to pay their separation pay based on the following computed amounts:

HERMINIO D. PENA P15,000.00

ESTEBAN BALDOZA P12,000.00

JORGE D. CANONIGO, JR. P16,000.00

IKE S. DELFIN P12,000.00

RIZALINO M. INTAL P16,000.00

REY T. MANLEGRO P16,000.00

JOHN L. MARTEJA P12,000.00

MARLON B. MORADA P16,000.00

ALLAN D. ESPINA P14,000.00

EDUARDO ONG P15,000.00

AGNESIO D. QUEBRAL P16,000.00

EDMUNDO B. VICTA P13,000.00

VICTOR P. ZAFARALLA P15,000.00

EDILBERTO C. PINGUL P19,500.00

FEDERICO M. RIVERA P15,000.00

TOTAL P222,500.00

Respondent [petitioner herein] is further directed to pay ten (10%) percent of the total award as attorney's fee or the sum of P22,250.00.

SO ORDERED.[5]

Both parties appealed to the NLRC, which reversed the decision of the Labor Arbiter and ruled that the documentary evidence, e.g., letters and memoranda by the petitioner to ACGI regarding the poor performance of the collectors, did not constitute proof of control since these documents merely identified the erring collectors; the appropriate disciplinary actions were left to the corporation to impose.[6] Further, there was no evidence showing

that the incorporation of ACGI was irregular.

Private respondents filed a petition for certiorari with the Court of Appeals, contending that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed the decision of the Labor Arbiter.

The Court of Appeals reversed the decision of the NLRC and reinstated with modification the decision of the Labor Arbiter.[7] It held that petitioner deliberately prevented the creation of an employment relationship with the private respondents; and that ACGI was not an independent contractor. It likewise denied petitioner's motion for reconsideration.[8]

Hence, this petition for review raising the following errors:

THE HONORABLE COURT OF APPEALS IN RENDERING THE ASSAILED DECISION AND RESOLUTION COMMITTED GRAVE REVERSIBLE ERRORS:

- IN GOING BEYOND ITS JURISDICTION AND PROCEEDING TO GIVE DUE COURSE TO RESPONDENTS' PETITION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT, NOTWITHSTANDING THE ABSENCE OF ANY PROOF OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION WHEN IT RENDERED THE DECISION ASSAILED BY HEREIN RESPONDENTS.
- WHEN IT MANIFESTLY OVERLOOKED THE EVIDENCE PRESENTED BY THE PETITIONER COMPANY AND RULING THAT THE PETITIONER'S DEFENSE OF LACK OF EMPLOYER-EMPLOYEE RELATIONS IS WITHOUT MERIT.
- IN CONCLUDING THAT PETITIONER COMPANY REQUIRED RESPONDENTS TO INCORPORATE THE ASSOCIATED COLLECTORS GROUP, INC. ["ACGI"] NOTWITHSTANDING ABSENCE OF ANY SPECIFIC EVIDENCE IN SUPPORT OF THE SAME.
- IN FINDING PETITIONER COMPANY GUILTY OF BAD FAITH NOTWITHSTANDING ABSENCE OF ANY SPECIFIC EVIDENCE IN SUPPORT OF THE SAME, AND AWARDING MORAL AND EXEMPLARY DAMAGES TO HEREIN RESPONDENTS.[9]

The pivotal issue to be resolved in this petition is whether or not there exists an employer-employee relationship between petitioner and private respondents. Corollary thereto is the issue of whether or not private respondents were illegally dismissed by petitioner.

The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact.[10] As a rule, the Supreme Court is not a trier of facts, and this applies with greater force in labor cases. Hence, factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter and if supported by substantial evidence, are accorded respect and even finality by this Court.[11] However, a disharmony between the factual findings of the Labor Arbiter and the National Labor Relations Commission opens the door to a review thereof by this Court. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. Moreover, when the findings of the National Labor Relations Commission contradict with those of the labor arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[12]

The resolution of the foregoing issues initially boils down to a determination of the true status of ACGI, i.e., whether it is an independent contractor or a labor-only contractor.

Petitioner asserts that ACGI, a duly organized corporation primarily engaged in collection services, is an independent contractor which entered into a service contract for the collection of petitioner's accounts starting

November 30, 1997 until the early part of February 1999. Thus, it has no employment relationship with private respondents, being employees of ACGI.

The existence of an employment relationship between petitioner and private respondents cannot be negated by simply alleging that the latter are employees of ACGI as an independent contractor, it being crucial that ACGI's status, whether as "labor-only contractor" or "independent contractor", be measured in terms of and determined by the criteria set by statute.

The case of *De los Santos v. NLRC*[13] succinctly enunciates this statutory criteria –

Job contracting is permissible only if the following conditions are met: 1) the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and 2) the contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of the business.

"Labor-only contracting" as defined in Section 5, Department Order No. 18-02, Rules Implementing Articles 106-109 of the Labor Code[14] refers to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform job, work or service for a principal, and any of the following elements is present:

- The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
- The contractor does not exercise the right to control over the performance of the work of the contractual employee.

Given the above criteria, we agree with the Labor Arbiter that ACGI was not an independent contractor.

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.[15] 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.[16] Moreover, in dealing with the consumers, private respondents used the receipts and identification cards issued by petitioner.[17]

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;[18] 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.[19] 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.

Under this factual milieu, there is no doubt that ACGI was engaged in labor-only contracting, and as such, is considered merely an agent of the petitioner. In labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer.[20] Since ACGI is only a labor-only contractor, the workers it supplied should be considered as employees of the petitioner.

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.[21]

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, pursuant to Article 280 of the Labor Code which reads:

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.

As such regular employees, private respondents are entitled to security of tenure which may not be circumvented by mere stipulation in a subsequent contract that their employment is one with a fixed period. While this Court has upheld the legality of fixed-term employment, where from the circumstances it is apparent that the periods

have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down or disregarded as contrary to public policy and morals.[22]

In the case at bar, we find that the term fixed in the subsequent contract was used to defeat the tenurial security which private respondents already enjoy. Thus, we concur with the Labor Arbiter, as affirmed by the Court of Appeals, when it held that:

The next question is whether, with respect to the period, the individual contracts are valid. Not all contracts of employment fixing a period are invalid. Under Article 280, the evil sought to be prevented is singled out: agreements entered into precisely to circumvent security of tenure. It has no application where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought upon the employee and absent any circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less terms with no moral dominance whatever being exercised by the former over the latter. That is the doctrine in *Brent School, Inc. v. Zamora*, 181 SCRA 702. The individual contracts in question were prepared by MWC in the form of the letter addressed to complainants. The letter-contract is dated September 1, 1997, when complainants were already working for MWC as collectors. With their employment as their means of survival, there was no room then for complainants to disagree with the presented letter-contracts. Their choice then was not to negotiate for the terms of the contract but to lose or not to lose their employment – employment which they already had at that time. The choice is obvious, as what they did, to sign the ready made letter-contract to retain their employment, and survive. It is a defiance of the teaching in *Brent School, Inc. v. Zamora* if this Office rules that the individual contracts in question are valid, so, in deference to *Brent School* ruling, this Office rules they are null and void.[23]

In view of the foregoing, we hold that an employment relationship exists between petitioner and private respondents. We now proceed to ascertain whether private respondents were dismissed in accordance with law.

As private respondents' employer, petitioner has the burden of proving that the dismissal was for a cause allowed under the law and that they were afforded procedural due process.[24] Petitioner failed to discharge this burden by substantial evidence as it maintained the defense that it was not the employer of private respondents. Having established that the schemes employed by petitioner were devious attempts to defeat the tenurial rights of private respondents and that it failed to comply with the requirements of termination under the Labor Code, the dismissal of the private respondent is tainted with illegality.

Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work is entitled to reinstatement without loss of seniority rights and other privileges, and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. However, if reinstatement is no longer possible, the employer has the alternative of paying the employee his separation pay in lieu of reinstatement.[25]

This Court however cannot sustain the award of moral and exemplary damages in favor of private respondents. Such an award cannot be justified solely upon the premise that the employer dismissed his employee without just cause or due process. Additional facts must be pleaded and proved to warrant the grant of moral damages under the Civil Code. The act of dismissal must be attended with bad faith, or fraud, or was oppressive to labor or done in a manner contrary to morals, good customs or public policy and, of course, that social humiliation, wounded feelings, or grave anxiety resulted therefrom. Similarly, exemplary damages are recoverable only when the dismissal was effected in a wanton, oppressive or malevolent manner.[26] Those circumstances have not been adequately established.

However, private respondents are entitled to attorney's fees as they were compelled to litigate with petitioners

and incur expenses to enforce and protect their interests.[27] The award by the Labor Arbiter of P22,250.00 as attorney's fees to private respondents, being reasonable, is sustained.

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals dated November 29, 2002, in CA-G.R. SP No. 67134, reversing the decision of the National Labor Relations Commission and reinstating the decision of the Labor Arbiter is **AFFIRMED** with the **MODIFICATION** that the awards of P10,000.00 as moral damages and P5,000.00 as exemplary damages are **DELETED** for lack of evidentiary basis.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Carpio, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Eugenio S. Labitoria and Danilo B. Pine.

[2] Rollo, pp. 5-8.

[3] Incorporated on November 21, 1997.

[4] Rollo, pp. 87-88.

[5] Id., p. 189.

[6] Id., p. 247.

[7] Id., pp. 49-50.

[8] Id., p. 53.

[9] Id., p. 9.

[10] *Fleischer Company, Inc. v. NLRC*, G.R. No. 121608, 26 March 2001, 355 SCRA 105, 111.

[11] *Tres Reyes v. Maxim's Tea House*, G.R. No. 140853, 27 February 2003.

[12] *Diamond Motors Corporation v. Court of Appeals*, G.R. No. 151981, 1 December 2003.

[13] 423 Phil. 1020, 1032 [2001], citing *Tiu v. NLRC*, 324 Phil. 202 [1996].

[14] Superseded Rule VIII-A, Book III of the Rules Implementing the Labor Code.

[15] Rollo, pp. 266-271.

[16] Id., pp. 61, 92.

[17] Id., p. 93.

[18] Id., pp. 277-278.

[19] Id., pp. 102-113.

[20] *San Miguel Corporation v. MAERC Integrated Services, Inc.*, G.R. No. 144672, 10 July 2003.

[21] *Sy v. Court of Appeals*, G.R. No. 142293, 27 February 2003.

[22] *Magsalin v. National Organization of Working Men*, G.R. No. 148492, 9 May 2003.

[23] Rollo, pp. 183-184, 37-38.

[24] Solidbank Corporation (now Metrobank) v. Court of Appeals, G.R. No. 151026, 25 August 2003.

[25] De Leon v. NLRC, G.R. No. 112661, 30 May 2001, 358 SCRA 274, 283.

[26] PSBA-Manila v. NLRC, 329 Phil. 932, 940 [1996].

[27] National Bookstore, Inc. v. Court of Appeals, G.R. No. 146741, 27 February 2002, 378 SCRA 194, 204.

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