

BIENVENIDO D. GOMA, PETITIONER, VS. PAMPLONA PLANTATION INCORPORATED, RESPONDENT.

G.R. No. 160905. July 04, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

For review is the Decision[1] of the Court of Appeals (CA) dated August 27, 2003 granting respondent Pamplona Plantation, Inc.'s petition for certiorari and its Resolution[2] dated November 11, 2003 denying petitioner Bienvenido Goma's motion for reconsideration, in CA-G.R. SP No. 74892.

Petitioner commenced[3] the instant suit by filing a complaint for illegal dismissal, underpayment of wages, non-payment of premium pay for holiday and rest day, five (5) days incentive leave pay, damages and attorney's fees, against the respondent. The case was filed with the Sub-Regional Arbitration Branch No. VII of Dumaguete City. Petitioner claimed that he worked as a carpenter at the Hacienda Pamplona since 1995; that he worked from 7:30 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m. daily with a salary rate of P90.00 a day paid weekly; and that he worked continuously until 1997 when he was not given any work assignment.[4] On a claim that he was a regular employee, petitioner alleged to have been illegally dismissed when the respondent refused without just cause to give him work assignment. Thus, he prayed for backwages, salary differential, service incentive leave pay, damages and attorney's fees.[5]

On the other hand, respondent denied having hired the petitioner as its regular employee. It instead argued that petitioner was hired by a certain Antoy Cañaverall, the manager of the hacienda at the time it was owned by Mr. Bower and leased by Manuel Gonzales, a jai-alai pelotari known as "Ybarra." [6] Respondent added that it was not obliged to absorb the employees of the former owner.

In 1995, Pamplona Plantation Leisure Corporation (PPLC) was created for the operation of tourist resorts, hotels and bars. Petitioner, thus, rendered service in the construction of the facilities of PPLC. If at all, petitioner was a project but not a regular employee.[7]

On June 28, 1999, Labor Arbiter Geoffrey P. Villahermosa dismissed the case for lack of merit.[8] The Labor Arbiter concluded that petitioner was hired by the former owner, hence, was not an employee of the respondent. Consequently, his money claims were denied.[9]

On appeal to the National Labor Relations Commission (NLRC), the petitioner obtained favorable judgment when the tribunal reversed and set aside the Labor Arbiter's decision. The dispositive portion of the NLRC decision reads:

WHEREFORE, the Decision of the Labor Arbiter is hereby SET ASIDE and a new one is hereby issued ORDERING the respondent, Pamplona Plantation Incorporated, the following:

1) to reinstate the complainant, BIENVENIDO D. GOMA to his former position immediately without loss of seniority rights and other privileges;

2) to pay the same complainant TWELVE THOUSAND THREE HUNDRED FIFTY-NINE PESOS (P12,359.00) in salary differentials;

3) to pay to the same complainant ONE HUNDRED ONE THOUSAND SIX HUNDRED SIXTY PESOS (P101,660.00) in backwages to be updated until actual reinstatement; and

4) to pay attorney's fee in the amount of ELEVEN THOUSAND FOUR HUNDRED TWO PESOS (P11,402.00) which is equivalent to ten percent (10%) of the total judgment award.

The respondent is further ordered to pay the aggregate amount of ONE HUNDRED FOURTEEN THOUSAND AND NINETEEN PESOS (P114,019.00) to the complainant through the cashier of this Commission within ten (10) days from receipt hereof.

SO ORDERED.[10]

Respondent's motion for reconsideration was denied by the NLRC on September 9, 2002.[11]

The NLRC upheld the existence of an employer-employee relationship, ratiocinating that it was difficult to believe that a simple carpenter from far away Pamplona would go to Dumaguete City to hire a competent lawyer to help him secure justice if he did not believe that his right as a laborer had been violated.[12] It added that the creation of the PPLC required the tremendous task of constructing hotels, inns, restaurants, bars, boutiques and service shops, thus involving extensive carpentry work. As an old carpentry hand in the old corporation, the possibility of petitioner's employment was great.[13] The NLRC likewise held that the respondent should have presented its employment records if only to show that petitioner was not included in its list of employees; its failure to do so was fatal.[14] Considering that petitioner worked for the respondent for a period of two years, he was a regular employee.[15]

Aggrieved, respondent instituted a special civil action for certiorari under Rule 65 before the Court of Appeals which granted the same; and consequently annulled and set aside the NLRC decision. The CA disposed, as follows:

WHEREFORE, premises considered, the instant petition is GRANTED. The assailed decision of the NLRC dated October 24, 2000, as well as the Resolution dated September 9, 2002 in NLRC Case No. V-000882-99, RAB VII-0088-98-D are hereby ANNULLED and SET ASIDE. The complaint is ordered DISMISSED.

SO ORDERED.[16]

Contrary to the NLRC's finding, the CA concluded that there was no employer-employee relationship. The CA stressed that petitioner having raised a positive averment, had the burden of proving the existence of an employer-employee relationship. Respondent, therefore, had no obligation to prove its negative averment.[17] The appellate court further held that while the respondent's business required the performance of occasional repairs and carpentry work, the retention of a carpenter in its payroll was not necessary or desirable in the conduct of its usual business.[18] Lastly, although the petitioner was an employee of the former owner of the hacienda, the respondent was not required to absorb such employees because employment contracts are in personam and binding only between the parties.[19]

Petitioner now comes before this Court raising the sole issue:

WHETHER OR NOT THE DECISION OF [THE] COURT OF APPEALS DATED AUGUST 27, 2003, REVERSING AND SETTING ASIDE THE NLRC (Fourth Division, Cebu City) RULING THAT THE "PETITIONER WAS NOT ILLEGALLY DISMISSED AS HE WAS NOT AN EMPLOYEE OF RESPONDENT", IS CONTRARY TO LAW AND JURISPRUDENCE ON WHICH IT WAS BASED, AND

NOT IN CONSONANCE WITH THE EVIDENCE ON RECORD.[20]

The disposition of this petition rests on the resolution of the following questions: 1) Is the petitioner a regular employee of the respondent? 2) If so, was he illegally dismissed from employment? and 3) Is he entitled to his monetary claims?

Petitioner insists that he was a regular employee of the respondent corporation. The respondent, on the other hand, counters that it did not hire the petitioner, hence, he was never an employee, much less a regular one.

Both the Labor Arbiter and the CA concluded that there was no employer-employee relationship between the petitioner and respondent. They based their conclusion on the alleged admission of the petitioner that he was previously hired by the former owner of the hacienda. Thus, they rationalized that since the respondent was not obliged to absorb all the employees of the former owner, petitioner's claim of employment could not be sustained. The NLRC, on the other hand, upheld petitioner's claim of regular employment because of the respondent's failure to present its employment records.

The existence of an employer-employee relationship involves a question of fact which is well within the province of the CA to determine. Nonetheless, given the reality that the CA's findings are at odds with those of the NLRC, the Court is constrained to probe into the attendant circumstances as appearing on record.[21]

A thorough examination of the records compels this Court to reach a conclusion different from that of the CA. It is true that petitioner admitted having been employed by the former owner prior to 1993 or before the respondent took over the ownership and management of the plantation, however, he likewise alleged having been hired by the respondent as a carpenter in 1995 and having worked as such for two years until 1997. Notably, at the outset, respondent categorically denied that it hired the petitioner. Yet, in its petition filed before the CA, respondent made this admission:

Private respondent [petitioner herein] cannot be considered a regular employee since the nature of his work is merely project in character in relation to the construction of the facilities of the Pamplona Plantation Leisure Corporation.

He is a project employee as he was hired - 1) for a specific project or undertaking, and 2) the completion or termination of such project or undertaking has been determined at the time of engagement of the employee. x x x.

x x x x

In other words, as regards those workers who worked in 1995 specifically in connection with the construction of the facilities of Pamplona Plantation Leisure Corporation, their employment was definitely "temporary" in character and not regular employment. Their employment was deemed terminated by operation of law the moment they had finished the job or activity under which they were employed.[22]

Thus, departing from its initial stand that it never hired petitioner, the respondent eventually admitted the existence of employer-employee relationship before the CA. It, however, qualified such admission by claiming that it was PPLC that hired the petitioner and that the nature of his employment therein was that of a "project" and not "regular" employee.

Parenthetically, this Court in Pamplona Plantation Company, Inc. v. Tinghil[23] and Pamplona Plantation Company v. Acosta[24] had pierced the veil of corporate fiction and declared that the two corporations,[25] PPLC and the herein respondent, are one and the same.

By setting forth these defenses, respondent, in effect, admitted that petitioner worked for it, albeit in a different

capacity. Such an allegation is in the nature of a negative pregnant, a denial pregnant with the admission of the substantial facts in the pleadings responded to which are not squarely denied, and amounts to an acknowledgment that petitioner was indeed employed by respondent.[26]

The employment relationship having been established, the next question we must answer is: Is the petitioner a regular or project employee?

We find the petitioner to be a regular employee.

Article 280 of the Labor Code, as amended, 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 service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

As can be gleaned from this provision, there are 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.[27] Simply stated, regular employees are classified into: regular employees by nature of work; and regular employees by years of service. The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the latter refers to those employees who have been performing the job, regardless of the nature thereof, for at least a year.[28] If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.[29]

Respondent is engaged in the management of the Pamplona Plantation as well as in the operation of tourist resorts, hotels, inns, restaurants, etc. Petitioner, on the other hand, was engaged to perform carpentry work. His services were needed for a period of two years until such time that the respondent decided not to give him work assignment anymore. Owing to his length of service, petitioner became a regular employee, by operation of law.

Respondent argues that, even assuming that petitioner can be considered an employee, he cannot be classified as a regular employee, but merely as a project employee whose services were hired only with respect to a specific job and only while that specific job existed.

A project employee 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. A project is a job or undertaking which is distinct, separate and identifiable from the usual or regular undertakings of the company. A project employee is assigned to a project which begins and ends at determined or determinable times.[30]

The principal test used to determine whether employees are project employees as distinguished from regular

employees, is whether or not the employees were assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time the employees were engaged for that project.[31] In this case, apart from respondent's bare allegation that petitioner was a project employee, it had not shown that petitioner was informed that he would be assigned to a specific project or undertaking. Neither was it established that he was informed of the duration and scope of such project or undertaking at the time of his engagement.

Most important of all, based on the records, respondent did not report the termination of petitioner's supposed project employment to the Department of Labor and Employment (DOLE). Department Order No. 19 (as well as the old Policy Instructions No. 20) requires employers to submit a report of an employee's termination to the nearest public employment

office every time the employment is terminated due to a completion of a project. Respondent's failure to file termination reports, particularly on the cessation of petitioner's employment, was an indication that the petitioner was not a project but a regular employee.[32]

We stress herein that the law overrides such conditions which are prejudicial to the interest of the worker whose weak bargaining position necessitates the succor of the State. What determines whether a certain employment is regular or otherwise is not the will or word of the employer, to which the worker oftentimes acquiesces. Neither is it the procedure of hiring the employee nor the manner of paying the salary or the actual time spent at work. It is the character of the activities performed by the employer in relation to the particular trade or business of the employer, taking into account all the circumstances, including the length of time of its performance and its continued existence. Given the attendant circumstances in the case at bar, it is obvious that one year after he was employed by the respondent, petitioner became a regular employee by operation of law.[33]

As to the question of whether petitioner was illegally dismissed, we answer in the affirmative.

Well-established is the rule that regular employees enjoy security of tenure and they can only be dismissed for just cause and with due process, i.e., after notice and hearing. In cases involving an employee's dismissal, the burden is on the employer to prove that the dismissal was legal. This burden was not amply discharged by the respondent in this case.

Obviously, petitioner's dismissal was not based on any of the just or authorized causes enumerated under Articles 282,[34] 283[35] and 284[36] of the Labor Code, as amended. After working for the respondent for a period of two years, petitioner was shocked to find out that he was not given any work assignment anymore. Hence, the requirement of substantive due process was not complied with.

Apart from the requirement that the dismissal of an employee be based on any of the just or authorized causes, the procedure laid down in Book VI, Rule I, Section 2 (d) of the Omnibus Rules Implementing the Labor Code, must be followed.[37] Failure to observe the rules is a violation of the employee's right to procedural due process.

In view of the non-observance of both substantive and procedural due process, in accordance with the guidelines outlined by this Court in *Agabon v. National Labor Relations Commission*,[38] we declare that petitioner's dismissal from employment is illegal.[39]

Having shown that petitioner is a regular employee and that his dismissal was illegal, we now discuss the propriety of the monetary claims of the petitioner. An illegally dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and (2) backwages.[40]

In the instant case, we are prepared to concede the impossibility of the reinstatement of petitioner considering that his position or any equivalent position may no longer be available in view of the length of time that this case has been pending. Moreover, the protracted litigation may have seriously abraded the relationship of the parties so as

to render reinstatement impractical. Accordingly, petitioner may be awarded separation pay in lieu of reinstatement.[41]

Petitioner's separation pay is pegged at the amount equivalent to petitioner's one (1) month pay, or one-half (1/2) month pay for every year of service, whichever is higher, reckoned from his first day of employment up to finality of this decision. Full backwages, on the other hand, should be computed from the date of his illegal dismissal until the finality of this decision.

On petitioner's entitlement to attorney's fees, we must take into account the fact that petitioner was illegally dismissed from his employment and that his wages and other benefits were withheld from him without any valid and legal basis. As a consequence, he was compelled to file an action for the recovery of his lawful wages and other benefits and, in the process, incurred expenses. On these bases, the Court finds that he is entitled to attorney's fees equivalent to ten percent (10%) of the monetary award.[42]

Lastly, we affirm the NLRC's award of salary differential. In light of our foregoing disquisition on the illegality of petitioner's dismissal, and our adoption of the NLRC's findings, suffice it to state that such issue is a question of fact, and we find no cogent reason to disturb the findings of the labor tribunal.

WHEREFORE, premises considered, the petition is GRANTED. The Decision of the Court of Appeals dated August 27, 2003 and its Resolution dated November 11, 2003 in CA-G.R. SP No. 74892 are REVERSED and SET ASIDE. Petitioner is found to have been illegally dismissed from employment and thus, is ENTITLED to: 1) Salary Differential embodied in the NLRC decision dated October 24, 2000 in NLRC Case No. V-000882-99; 2) Separation Pay; 3) Backwages; and 4) Attorney's fees equivalent to ten percent (10%) of the monetary awards. Upon finality of this judgment, let the records of the case be remanded to the NLRC for the computation of the exact amounts due the petitioner.

SO ORDERED.

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

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Mercedes Gozo-Dadole and Edgardo F. Sundiam, concurring; rollo, pp. 163-169.

[2] Rollo, p. 193.

[3] Petitioner filed the complaint on July 23, 1998.

[4] Rollo, p. 164.

[5] Id. at 90.

[6] Id. at 165.

[7] Id. at 61.

[8] The dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered Dismissing this case for lack of merit. SO ORDERED. (Id. at 95.)

[9] Rollo, p. 94.

[10] Id. at 83-84.

[11] Id. at 85-87.

[12] Id. at 79.

[13] Id. at 79-80.

[14] Id. at 80.

[15] Id. at 81.

[16] Id. at 169.

[17] Id. at 167.

[18] Id. at 168.

[19] Id.

[20] Id. at 259.

[21] Manila Electric Company v. Benamira, G.R. No. 145271, July 14, 2005, 463 SCRA 331, 348.

[22] CA rollo, pp. 20-22.

[23] G.R. No. 159121, February 3, 2005, 450 SCRA 421.

[24] G.R. No. 153193, December 6, 2006, 510 SCRA 249.

[25] The Pamplona Plantation Corporation, Inc. and the Pamplona Plantation Leisure Corporation.

[26] Pamplona Plantation Company v. Acosta, *supra* note 24, at 253.

[27] Rowell Industrial Corporation v. Court of Appeals, G.R. No. 167714, March 7, 2007, 517 SCRA 691, 698-699; ABS-CBN Broadcasting Corporation v. Nazareno, G.R. No. 164156, September 26, 2006, 503 SCRA 204, 227; Poseidon Fishing v. National Labor Relations Commission, G.R. No. 168052, February 20, 2006, 482 SCRA 717, 731; Aurora Land Projects Corp. v. NLRC, G.R. No. 114733, January 2, 1997, 266 SCRA 48, 61-62.

[28] Rowell Industrial Corporation v. Court of Appeals, *supra*, at 700.

[29] Philippine Long Distance Telephone Company, Inc. (PLDT) v. Ylagan, G.R. No. 155645, November 24, 2006, 508 SCRA 31, 36; ABS-CBN Broadcasting Corporation v. Nazareno, *supra*, at 226; Poseidon Fishing v. National Labor Relations Commission, *supra*, at 730; see also Aurora Land Projects Corp. v. NLRC, *supra*, at 62.

[30] Philippine Long Distance Telephone Company, Inc. (PLDT) v. Ylagan, *supra* note 29, at 35.

[31] Poseidon Fishing v. National Labor Relations Commission, *supra* note 27, at 734.

[32] ABS-CBN Broadcasting Corporation v. Nazareno, *supra* note 27, at 229; Philippine Long Distance Telephone Company, Inc. (PLDT) v. Ylagan, *supra* note 29, at 36.

[33] ABS-CBN Broadcasting Corporation v. Nazareno, *supra* note 29, at 227-228.

[34] 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.

[35] ART. 283. CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment [now Secretary of Labor] at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[36] ART. 284. DISEASE AS GROUND FOR TERMINATION. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[37] Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard and after hearing or opportunity to be heard, a notice of the decision to dismiss; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation; *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 607.

[38] *Id.*

[39] The Court, in the case of *Agabon* enumerated the four possible situations that may be derived in illegal dismissal cases, thus:

- (1) the dismissal is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed;
- (2) the dismissal is without just or authorized cause but due process was observed;
- (3) the dismissal is without just or authorized cause and there was no due process; and
- (4) the dismissal is for just or authorized cause but due process was not observed; *Agabon v. National Labor Relations Commission*, *supra*. at 608.

[40] *Aurora Land Projects Corp. v. NLRC*, *supra* note 27, at 66.

[41] *Mendoza v. NLRC*, 369 Phil. 1113, 1131 (1999); *Caliguia v. NLRC*, 332 Phil. 128, 142 (1996).

[42] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 153031, December 14,

2006, 511 SCRA 44, 65.

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