THELMA DUMPIT-MURILLO, PETITIONER, VS. COURT OF APPEALS, ASSOCIATED BROADCASTING COMPANY, JOSE JAVIER AND EDWARD TAN, RESPONDENTS.

G.R. No. 164652. June 08, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition seeks to reverse and set aside both the Decision[1] dated January 30, 2004 of the Court of Appeals in CA-G.R. SP No. 63125 and its Resolution[2] dated June 23, 2004 denying the motion for reconsideration. The Court of Appeals had overturned the Resolution[3] dated August 30, 2000 of the National Labor Relations Commission (NLRC) ruling that petitioner was illegally dismissed.

The facts of the case are as follows:

On October 2, 1995, under Talent Contract No. NT95-1805,[4] private respondent Associated Broadcasting Company (ABC) hired petitioner Thelma Dumpit-Murillo as a newscaster and co-anchor for Balitang-Balita, an early evening news program. The contract was for a period of three months. It was renewed under Talent Contracts Nos. NT95-1915, NT96-3002, NT98-4984 and NT99-5649.[5] In addition, petitioner's services were engaged for the program "Live on Five." On September 30, 1999, after four years of repeated renewals, petitioner's talent contract expired. Two weeks after the expiration of the last contract, petitioner sent a letter to Mr. Jose Javier, Vice President for News and Public Affairs of ABC, informing the latter that she was still interested in renewing her contract subject to a salary increase. Thereafter, petitioner stopped reporting for work. On November 5, 1999, she wrote Mr. Javier another letter,[6] which we quote verbatim:

> x x x x
>
> Dear Mr. Javier:
>
> On October 20, 1999, I wrote you a letter in answer to your query by way of a marginal note "what terms and conditions" in response to my first letter dated October 13, 1999. To date, or for more than fifteen (15) days since then, I have not received any formal written reply. xxx
>
> In view hereof, should I not receive any formal response from you until Monday, November 8, 1999, I will deem it as a constructive dismissal of my services.
>
> x x x x

A month later, petitioner sent a demand letter[7] to ABC, demanding: (a) reinstatement to her former position; (b) payment of unpaid wages for services rendered from September 1 to October 20, 1999 and full backwages; (c) payment of 13[th] month pay, vacation/sick/service incentive leaves and other monetary benefits due to a regular employee starting March 31, 1996. ABC replied that a check covering petitioner's talent fees for September 16 to October 20, 1999 had been processed and prepared, but that the other claims of petitioner had no basis in fact or

in law.

On December 20, 1999, petitioner filed a complaint[8] against ABC, Mr. Javier and Mr. Edward Tan, for illegal constructive dismissal, nonpayment of salaries, overtime pay, premium pay, separation pay, holiday pay, service incentive leave pay, vacation/sick leaves and 13[th] month pay in NLRC-NCR Case No. 30-12-00985-99. She likewise demanded payment for moral, exemplary and actual damages, as well as for attorney's fees.

The parties agreed to submit the case for resolution after settlement failed during the mandatory conference/conciliation. On March 29, 2000, the Labor Arbiter dismissed the complaint.[9]

On appeal, the NLRC reversed the Labor Arbiter in a Resolution dated August 30, 2000. The NLRC held that an employer-employee relationship existed between petitioner and ABC; that the subject talent contract was void; that the petitioner was a regular employee illegally dismissed; and that she was entitled to reinstatement and backwages or separation pay, aside from 13th month pay and service incentive leave pay, moral and exemplary damages and attorney's fees. It held as follows:

> WHEREFORE, the Decision of the Arbiter dated 29 March 2000 is hereby REVERSED/SET ASIDE and a NEW ONE promulgated:
>
> 1) declaring respondents to have illegally dismissed complainant from her regular work therein and thus, ordering them to reinstate her in her former position without loss of seniority right[s] and other privileges and to pay her full backwages, inclusive of allowances and other benefits, including 13th month pay based on her said latest rate of P28,000.00/mo. from the date of her illegal dismissal on 21 October 1999 up to finality hereof, or at complainant's option, to pay her separation pay of one (1) month pay per year of service based on said latest monthly rate, reckoned from date of hire on 30 September 1995 until finality hereof;
>
> 2) to pay complainant's accrued SILP [Service Incentive Leave Pay] of 5 days pay per year and 13[th] month pay for the years 1999, 1998 and 1997 of P19,236.00 and P84,000.00, respectively and her accrued salary from 16 September 1999 to 20 October 1999 of P32,760.00 plus legal interest at 12% from date of judicial demand on 20 December 1999 until finality hereof;
>
> 3) to pay complainant moral damages of P500,000.00, exemplary damages of P350,000.00 and 10% of the total of the adjudged monetary awards as attorney's fees.
>
> Other monetary claims of complainant are dismissed for lack of merit.
>
> SO ORDERED.[10]

After its motion for reconsideration was denied, ABC elevated the case to the Court of Appeals in a petition for certiorari under Rule 65. The petition was first dismissed for failure to attach particular documents,[11] but was reinstated on grounds of the higher interest of justice.[12]

Thereafter, the appellate court ruled that the NLRC committed grave abuse of discretion, and reversed the decision of the NLRC.[13] The appellate court reasoned that petitioner should not be allowed to renege from the stipulations she had voluntarily and knowingly executed by invoking the security of tenure under the Labor Code. According to the appellate court, petitioner was a fixed-term employee and not a regular employee within the ambit of Article 280[14] of the Labor Code because her job, as anticipated and agreed upon, was only for a specified time.[15]

Aggrieved, petitioner now comes to this Court on a petition for review, raising issues as follows:

> I.
>
> THIS HONORABLE COURT CAN REVIEW THE FINDINGS OF THE HONORABLE COURT OF

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APPEALS, THE DECISION OF WHICH IS NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT[;]

II.

THE PRO-FORMA TALENT CONTRACTS, AS CORRECTLY FOUND BY THE NLRC – FIRST DIVISION, ARE "ANTI-REGULARIZATION DEVICES" WHICH MUST BE STRUCK DOWN FOR REASONS OF PUBLIC POLICY[;]

III.

BY REASON OF THE CONTINUOUS AND SUCCESSIVE RENEWALS OF THE THREE-MONTH TALENT CONTRACTS, AN EMPLOYER-EMPLOYEE RELATIONSHIP WAS CREATED AS PROVIDED FOR UNDER ARTICLE 280 OF THE LABOR CODE[;]

IV.

BY THE CONSTRUCTIVE DISMISSAL OF HEREIN PETITIONER, AS A REGULAR EMPLOYEE, THERE WAS A DENIAL OF PETITIONER'S RIGHT TO DUE PROCESS THUS ENTITLING HER TO THE MONEY CLAIMS AS STATED IN THE COMPLAINT[.][16]

The issues for our disposition are: (1) whether or not this Court can review the findings of the Court of Appeals; and (2) whether or not under Rule 45 of the Rules of Court the Court of Appeals committed a reversible error in its Decision.

On the first issue, private respondents contend that the issues raised in the instant petition are mainly factual and that there is no showing that the said issues have been resolved arbitrarily and without basis. They add that the findings of the Court of Appeals are supported by overwhelming wealth of evidence on record as well as prevailing jurisprudence on the matter.[17]

Petitioner however contends that this Court can review the findings of the Court of Appeals, since the appellate court erred in deciding a question of substance in a way which is not in accord with law or with applicable decisions of this Court.[18]

We agree with petitioner. Decisions, final orders or resolutions of the Court of Appeals in any case – regardless of the nature of the action or proceeding involved – may be appealed to this Court through a petition for review. This remedy is a continuation of the appellate process over the original case,[19] and considering there is no congruence in the findings of the NLRC and the Court of Appeals regarding the status of employment of petitioner, an exception to the general rule that this Court is bound by the findings of facts of the appellate court,[20] we can review such findings.

On the second issue, private respondents contend that the Court of Appeals did not err when it upheld the validity of the talent contracts voluntarily entered into by petitioner. It further stated that prevailing jurisprudence has recognized and sustained the absence of employer-employee relationship between a talent and the media entity which engaged the talent's services on a per talent contract basis, citing the case of Sonza v. ABS-CBN Broadcasting Corporation.[21]

Petitioner avers however that an employer-employee relationship was created when the private respondents started to merely renew the contracts repeatedly fifteen times or for four consecutive years.[22]

Again, we agree with petitioner. The Court of Appeals committed reversible error when it held that petitioner was a fixed-term employee. Petitioner was a regular employee under contemplation of law. The practice of having fixed-term contracts in the industry does not automatically make all talent contracts valid and compliant with

labor law. The assertion that a talent contract exists does not necessarily prevent a regular employment status.[23]

Further, the Sonza case is not applicable. In Sonza, the television station did not instruct Sonza how to perform his job. How Sonza delivered his lines, appeared on television, and sounded on radio were outside the television station's control. Sonza had a free hand on what to say or discuss in his shows provided he did not attack the television station or its interests. Clearly, the television station did not exercise control over the means and methods of the performance of Sonza's work.[24] In the case at bar, ABC had control over the performance of petitioner's work. Noteworthy too, is the comparatively low P28,000 monthly pay of petitioner[25] vis the P300,000 a month salary of Sonza,[26] that all the more bolsters the conclusion that petitioner was not in the same situation as Sonza.

The contract of employment of petitioner with ABC had the following stipulations:

> x x x x
>
> 1. SCOPE OF SERVICES – TALENT agrees to devote his/her talent, time, attention and best efforts in the performance of his/her duties and responsibilities as Anchor/Program Host/Newscaster of the Program, in accordance with the direction of ABC and/or its authorized representatives.
>
> 1.1. DUTIES AND RESPONSIBILITIES – TALENT shall:
>
> - Render his/her services as a newscaster on the Program;
>
> - Be involved in news-gathering operations by conducting interviews on- and off-the-air;
>
> - Participate in live remote coverages when called upon;
>
> - Be available for any other news assignment, such as writing, research or camera work;
>
> - Attend production meetings;
>
> - f. On assigned days, be at the studios at least one (1) hour before the live telecasts;
>
> - Be present promptly at the studios and/or other place of assignment at the time designated by ABC;
>
> - Keep abreast of the news;
>
> - Give his/her full cooperation to ABC and its duly authorized representatives in the production and promotion of the Program; and
>
> - Perform such other functions as may be assigned to him/her from time to time.
>
> x x x x
>
> 1.3 COMPLIANCE WITH STANDARDS, INSTRUCTIONS AND OTHER RULES AND REGULATIONS – TALENT agrees that he/she will promptly and faithfully comply with the requests and instructions, as well as the program standards, policies, rules and regulations of ABC, the KBP and the government or any of its agencies and instrumentalities.[27]x x x

In Manila Water Company, Inc. v. Pena,[28] we said that 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 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.[29]

The duties of petitioner as enumerated in her employment contract indicate that ABC had control over the work of

petitioner. Aside from control, ABC also dictated the work assignments and payment of petitioner's wages. ABC also had power to dismiss her. All these being present, clearly, there existed an employment relationship between petitioner and ABC.

Concerning regular employment, the law provides for two kinds of 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.[30] In other words, regular status arises from either the nature of work of the employee or the duration of his employment.[31] In Benares v. Pancho,[32] we very succinctly said:

> "[T]he primary standard for determining regular employment is the reasonable connection between the particular activity performed by the employee vis-á-vis the usual trade or business of the employer. This 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. If the employee has been performing the job for at least a year, even if the performance is not continuous and merely intermittent, the law deems repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is considered regular, but only with respect to such activity and while such activity exists.[33]

In our view, the requisites for regularity of employment have been met in the instant case. Gleaned from the description of the scope of services aforementioned, petitioner's work was necessary or desirable in the usual business or trade of the employer which includes, as a pre-condition for its enfranchisement, its participation in the government's news and public information dissemination. In addition, her work was continuous for a period of four years. This repeated engagement under contract of hire is indicative of the necessity and desirability of the petitioner's work in private respondent ABC's business.[34]

The contention of the appellate court that the contract was characterized by a valid fixed-period employment is untenable. For such contract to be valid, it should be shown that the fixed period was knowingly and voluntarily agreed upon by the parties. There should have been no force, duress or improper pressure brought to bear upon the employee; neither should there be any other circumstance that vitiates the employee's consent.[35] It should satisfactorily appear that the employer and the employee dealt with each other on more or less equal terms with no moral dominance being exercised by the employer over the employee.[36] Moreover, fixed-term employment will not be considered valid where, from the circumstances, it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee.[37]

In the case at bar, it does not appear that the employer and employee dealt with each other on equal terms. Understandably, the petitioner could not object to the terms of her employment contract because she did not want to lose the job that she loved and the workplace that she had grown accustomed to,[38] which is exactly what happened when she finally manifested her intention to negotiate. Being one of the numerous newscasters/broadcasters of ABC and desiring to keep her job as a broadcasting practitioner, petitioner was left with no choice but to affix her signature of conformity on each renewal of her contract as already prepared by private respondents; otherwise, private respondents would have simply refused to renew her contract. Patently, the petitioner occupied a position of weakness vis-á-vis the employer. Moreover, private respondents' practice of repeatedly extending petitioner's 3-month contract for four years is a circumvention of the acquisition of regular status. Hence, there was no valid fixed-term employment between petitioner and private respondents.

While this Court has recognized the validity of fixed-term employment contracts in a number of cases, it has consistently emphasized that when the circumstances of a case show that the periods were imposed to block the acquisition of security of tenure, they should be struck down for being contrary to law, morals, good customs,

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public order or public policy.[39]

As a regular employee, petitioner is entitled to security of tenure and can be dismissed only for just cause and after due compliance with procedural due process. Since private respondents did not observe due process in constructively dismissing the petitioner, we hold that there was an illegal dismissal.

WHEREFORE, the challenged Decision dated January 30, 2004 and Resolution dated June 23, 2004 of the Court of Appeals in CA-G.R. SP No. 63125, which held that the petitioner was a fixed-term employee, are REVERSED and SET ASIDE. The NLRC decision is AFFIRMED.

Costs against private respondents.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 207-220. Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Eubulo G. Verzola and Remedios Salazar-Fernando concurring.

[2] Id. at 246. Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Remedios Salazar-Fernando and Mariano C. Del Castillo concurring.

[3] Id. at 90-125.

[4] CA rollo, pp. 105-107.

[5] Id. at 108-112.

[6] Id. at 121.

[7] Id. at 123.

[8] Id. at 213-214.

[9] Id. at 155-169.

[10] Id. at 124-125.

[11] Rollo, p. 180.

[12] Id. at 195.

[13] Id. at 220.

[14] 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.
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.

[15] Rollo, p. 217.

[16] Id. at 382.

[17] Id. at 335.

[18] Id. at 387.

[19] Pagoda Philippines, Inc. v. Universal Canning, Inc., G.R. No. 160966, October 11, 2005, 472 SCRA 355, 359.

[20] Cirelos v. Hernandez, G.R. No. 146523, June 15, 2006, 490 SCRA 625, 635.

[21] G.R. No. 138051, June 10, 2004, 431 SCRA 583.

[22] Rollo, pp. 420-421.

[23] See ABS-CBN Broadcasting Corporation v. Marquez, G.R. No. 167638, June 22, 2005, pp. 5-6 (Unsigned Resolution), where the Court held what petitioner ABS-CBN called "talents" as regular employees. The Court declared: "It may be so that respondents were assigned to a particular tele-series. However, petitioner can and did immediately reassign them to a new production upon completion of a previous one. Hence, they were continuously employed, the tele-series being a regular feature in petitioner's network programs. Petitioner's continuous engagement of respondents from one production after another, for more than five years, made the latter part of petitioner's workpool who cannot be separated from the service without cause as they are considered regular. A project employee or a member of a workpool may acquire the status of a regular employee when the following concur: there is continuous rehiring of project employees even after the cessation of the project and the tasks performed by the alleged "project employee" are vital, necessary, and indispensable to the usual business or trade of his employer. It cannot be denied that the services of respondents as members of a crew in the production of a tele-series are undoubtedly connected with the business of the petitioner. This Court has held that the primary standard in determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the business or trade of his employer. Here, the activity performed by respondents is, without doubt, vital to petitioner's trade or business."

[24] See Sonza v. ABS-CBN Broadcasting Corporation, supra note 21, at 599, which also held that in the United States, aside from the right of control test, there are the "economic reality" test and the "multi-factor test." The tests are drawn from statutes, regulations, rules, policies, rulings, case law and the like. The "right of control" test applies under the Federal Internal Revenue Code ("IRC"). The "economic reality" test applies to the Federal Fair Labor Standards Act ("FLSA"). The California Division of Labor Standards Enforcement ("DLSE") uses a hybrid of these two tests often referred to as the "multi-factor test" in determining who an employee is.

[25] Rollo, p. 95.

[26] Supra note 21, at 596.

[27] CA rollo, p. 113.

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

[29] Id. at 61, 62.

[30] Philippine Fruit & Vegetable Industries, Inc. v. NLRC, G.R. No. 122122, July 20, 1999, 310 SCRA 673, 681.

[31] Bernardo v. National Labor Relations Commission, G.R. No. 122917, July 12, 1999, 310 SCRA 186, 204-205.

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[32] G.R. No. 151827, April 29, 2005, 457 SCRA 652.

[33] Id. at 660.

[34] Samson v. National Labor Relations Commission, G.R. No. 113166, February 1, 1996, 253 SCRA 112, 123.

[35] Brent School, Inc. v. Zamora, G.R. No. 48494, February 5, 1990, 181 SCRA 702, 716 cited in Pangilinan v. General Milling Corporation, G.R. No. 149329, July 12, 2004, 434 SCRA 159, 170.

[36] Pangilinan v. General Milling Corporation, id.

[37] Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission, G.R. No. 152427, August 9, 2005, 466 SCRA 265, 273.

[38] Rollo, p. 425.

[39] Innodata Philippines, Inc. v. Quejada-Lopez, G.R. No. 162839, October 12, 2006, 504 SCRA 253, 258-259.

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