

**UNIVERSAL ROBINA CORPORATION AND/OR RANDY GREGORIO,
PETITIONERS, VS. BENITO CATAPANG, CARLOS ARARAO, ALVIN
ALCANTARA, RESTY ALCORAN, REYNALDO ARARAO, JUAN
ARISTADO, LITO CABRERA...**

G.R. NO. 164736. October 14, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Petitioner Universal Robina Corporation is a corporation duly organized and existing under the Philippine laws, while petitioner Randy Gregorio is the manager of the petitioner company's duck farm in Calauan, Laguna.[1]

The individual respondents were hired by the petitioner company on various dates from 1991 to 1993 to work at its duck farm in Barangay Sto. Tomas, Calauan, Laguna. The respondents were hired under an employment contract which provided for a five-month period. After the expiration of the said employment contracts, the petitioner company would renew them and re-employ the respondents. This practice continued until sometime in 1996, when the petitioners informed the respondents that they were no longer renewing their employment contracts.[2]

In October 1996, the respondents filed separate complaints for illegal dismissal, reinstatement, backwages, damages and attorney's fees against the petitioners. The complaints were later consolidated.

On March 30, 1999, after due proceedings, the Labor Arbiter rendered a decision in favor of the respondents:

WHEREFORE, premises considered, judgment is hereby rendered declaring that complainants have indeed been illegally dismissed from their employment.

Accordingly, respondents are hereby ordered to reinstate individual complainants to their former positions without loss of seniority rights and to pay them their backwages as follows:

Complainants Amount

1. Reynaldo Ararao P113,703.20
2. Carlos Ararao P100,372.48
3. Resty Alcoran P100,372.48
4. Richard Coronado P113,703.20
5. Quirino Platero P113,703.20
6. Benito Catapang P113,703.20
7. Jose Loria, Jr. P100,372.48

8. Elpidio Villanueva P113,703.20
9. Jonathan Villanueva P113,703.20
10. Baltazar Villanueva P113,703.20
11. Victoriano Loria P144,881.10
12. Roderick Pangao P100,372.48
13. Lito Cabrera P113,703.20
14. Elmer Hiling P113,703.20
15. Jaime Villegas P113,703.20
16. Angelito Conchada P119,192.20
17. Juan Aristado P113,703.20
18. Joel Villanueva P113,703.20
19. Ben Cervas P113,703.20
20. Ruel Marikit P113,703.20
21. Ireneo Comendador P113,703.20
- Total ----- P2,339,933.44

Respondents are likewise ordered to pay fifteen percent (15%) of the total amount due, or P 350,990.01, as and by way of attorney's fees.

SO ORDERED.[3]

On May 17, 1999, the petitioners filed an Appeal Memorandum with the National Labor Relations Commission (NLRC) on the ground that the Labor Arbiter erred in ruling that the respondents are the petitioner company's regular employees.

Meanwhile, on May 18, 1999, the respondents filed a Motion for Enforcement of Reinstatement Order with the Labor Arbiter. On June 3, 1999, the latter issued an Order, which reads in full:

Finding the "Motion for Enforcement of Reinstatement Order" dated 18 May 1999, filed by the complainants to be in order, respondents are hereby directed to immediately comply in good faith to the reinstatement aspect of the Decision of this Office dated 30 March 1999.

Furthermore, it appearing from the records that several individuals in this case were inadvertently omitted as party-complainants in the aforesaid Decision, clarification is hereby made that the complainants hereinbelow set forth are to be deemed included in the coverage of the said decision with the corresponding right(s) to their backwages, to wit:

1. Alvin Alcantara - P129,126.40
2. Onofre Casano - P106,917.20
3. Joseph Chuidian - P104,165.10
4. Ramon Joyosa - P128,029.20

5. Pablito Redondo - P105,409.20
6. Ramil Roxas - P109,330.00
7. Resty Salazar - P105,296.10
8. Noel Trinidad - P108,312.10
9. Felicisimo Varela - P119,358.20

TOTAL - P1,015,943.50

SO ORDERED.[4]

On June 21, 1999, the Labor Arbiter issued a Writ of Execution enforcing the immediate reinstatement of the respondents as mandated in the March 30, 1999 Decision.

On July 13, 1999, the petitioners manifested to the Labor Arbiter that they can reinstate only 17 of the 30 employees in view of the phase out of the petitioner company's Agricultural Section as early as 1996. They averred that there were no other available positions substantially similar to the positions previously occupied by the other 13 respondents, but that 10 of them could be accommodated at the farm's Duck Dressing Section which operates at an average of three days a week only.[5]

On August 2, 1999, the Sheriff filed a Report stating that the petitioners had not yet reinstated the respondents.[6] The respondents then urged the Labor Arbiter to order their physical or payroll reinstatement and to cite the petitioners in contempt. On November 26, 1999, the Labor Arbiter issued an Order[7] directing the petitioners, under pain of contempt, to comply with the March 30, 1999 Decision.

On December 16, 1999, 17 employees were reinstated to their former positions. Thereafter, the respondents moved for the immediate reinstatement of the remaining 13 respondents. In the meantime, the petitioners manifested to the Labor Arbiter about the closure of the duck farm effective March 15, 2000.[8]

On February 9, 2000, the Labor Arbiter issued an Order[9] directing the petitioners to immediately effect the actual or payroll reinstatement of the remaining 13 respondents. In the said Order, the petitioners were likewise directed to settle whatever financial accountabilities they may have with the said respondents due to the delay in complying with the reinstatement aspect of the March 30, 1999 Decision.

On February 16, 2000, the respondents manifested that the petitioners still failed and refused to comply with the February 9, 2000 Order. That same day, the Labor Arbiter issued an Alias Writ of Execution commanding the Sheriff to cause the immediate reinstatement of the 13 respondents and to collect their withheld salaries.[10]

On February 21, 2000, the respondents moved for the issuance of a notice of garnishment to collect the accumulated withheld wages of the 17 respondents who were reinstated on December 16, 1999 amounting to P649,400.00. The Labor Arbiter granted the motion and issued a Second Alias Writ of Execution directing the Sheriff to proceed to collect the said amount plus execution fees.[11]

Thereafter, the petitioners filed an urgent motion to reconsider the February 9, 2000 Order and to quash the Alias Writ of Execution. They reiterated their previous contention that they are unable to comply with the order either because the section to which the 13 respondents were previously assigned had been phased out or the positions previously held by them have already been filled up.[12]

On March 1, 2000, the Labor Arbiter issued an Order[13] denying the petitioners' motion to quash insofar as the reinstatement aspect is concerned as well as the motion to reconsider and set aside the February 9, 2000 Order. In

case of failure to comply with the reinstatement of the 13 respondents, the Labor Arbiter directed the petitioner company to pay them separation pay instead.[14]

On March 13, 2000, the petitioners filed a Memorandum and Notice of Appeal with Prayer for the Issuance of a Temporary Restraining Order[15] with the NLRC, assailing the February 9, 2000 and March 1, 2000 Orders and the two Alias Writs of Execution issued by the Labor Arbiter.

On November 22, 2000, the NLRC affirmed the decision of the Labor Arbiter with the modification that the award of attorney's fees was reduced to 10% of the total monetary award.[16]

Aggrieved, the petitioners filed a petition for certiorari with the Court of Appeals (CA). On August 21, 2003, the CA denied the petition for lack of merit.[17] The CA held that after rendering more than one year of continuous service, the respondents became regular employees of the petitioners by operation of law. Moreover, the petitioners used the five-month contract of employment as a convenient subterfuge to prevent the respondents from becoming regular employees and such contractual arrangement should be struck down or disregarded as contrary to public policy or morals. The petitioners' act of repeatedly and continuously hiring the respondents in a span of three to five years to do the same kind of work negates their assertion that the respondents were hired for a specific project or undertaking only. As to the issue of the failure to reinstate the 13 respondents pending appeal, the CA opined that the petitioners should have at least reinstated them in the payroll if there were indeed no longer any available positions for which they could be accommodated.[18] Finally, the CA did not believe that the petitioners' counsel was not furnished with copies of the assailed orders and the alias writs of execution considering that, after the issuance of the said orders, the petitioners were able to file several pleadings questioning the same.[19]

On September 23, 2003, the petitioners filed a Manifestation and Motion for Additional Time to File a Motion for Reconsideration of the CA Decision.[20] They alleged therein that they received a copy of the decision on September 8, 2003 and had until September 23, 2003 to file a motion for reconsideration. They then prayed for an extension of 10 days, or until October 3, 2003, to submit a motion for reconsideration.

Realizing their error, the petitioners filed their Motion for Reconsideration two days later. In a Resolution[21] dated September 30, 2003, the CA denied the petitioners' earlier motion for extension of time for being a prohibited pleading. Subsequently, the petitioners filed their Urgent Motion to Admit Petitioners' Motion for Reconsideration, but the CA merely noted the petitioners' motion for reconsideration in its April 15, 2004 Resolution. This prompted the petitioners to file a Motion to Resolve Petitioners' Motion for Reconsideration.[22] Finding no cogent reason to depart from its previous resolution denying the motion for extension of time to file a motion for reconsideration, the CA denied the said motion for lack of merit on July 19, 2004.[23]

Hence, this petition for review wherein the petitioners raise the following grounds:

I.

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT THE RESPONDENTS ATTAINED THE STATUS OF REGULAR EMPLOYMENT AFTER THE LAPSE OF ONE YEAR FROM THE DATE OF THEIR EMPLOYMENT.

II.

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT DESPITE THE UNAVAILABILITY OF POSITIONS WHERE THE THIRTEEN (13) RESPONDENTS ARE TO BE REINSTATED THEY SHOULD STILL BE REINSTATED THROUGH PAYROLL.

III.

THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RESOLVE THE ISSUE OF WHETHER OR NOT THE PETITIONERS SHOULD BE HELD LIABLE FOR THE PAYMENT OF THE ALLEGED WITHHELD SALARIES OF THE RESPONDENTS FROM THE DATE OF ISSUANCE OF THE WRIT DESPITE THAT RESPONDENTS' BELATED OR NON-REINSTATEMENT CANNOT BE ATTRIBUTED TO THE PETITIONERS.

IV.

THE COURT OF APPEALS SHOULD HAVE RESOLVED PETITIONERS' MOTION FOR RECONSIDERATION CONSIDERING THAT THE DELAY WAS ONLY FOR TWO (2) DAYS AND WAS THE RESULT OF AN HONEST MISTAKE.[24]

The petitioners submit that the respondents are not regular employees. They aver that it is of no moment that the respondents have rendered service for more than a year since they were covered by the five-month individual contracts to which they duly acquiesced. The petitioners contend that they were free to terminate the services of the respondents at the expiration of

their individual contracts. The petitioners maintain that, in doing so, they merely implemented the terms of the contracts.[25]

The petitioners assert that the respondents' contracts of employment were not intended to circumvent security of tenure. They point out that the respondents knowingly and voluntarily agreed to sign the contracts without the petitioners having exercised any undue advantage over them. Moreover, there is no evidence showing that the petitioners exerted moral dominance on the respondents.[26]

The petitioners further assert that they cannot be compelled to actually reinstate, or merely reinstate in the payroll the 13 respondents considering there are no longer any available positions in the company. They submit that reinstatement presupposes that the previous positions from which the respondents had been removed still exist or that there are unfilled positions, more or less, of similar nature as the ones previously occupied by the said employees. Consequently, they cannot be made to pay the salaries of these employees from the time the writ of execution was issued.[27]

Finally, the petitioners aver that their motion for reconsideration of the CA Decision should have been admitted by the CA considering that the delay was only for two days and such delay was due to an honest mistake. They maintain that the ends of substantial justice would have been better served if the motion for reconsideration was resolved since it raised critical issues previously raised in the petition but not resolved by the CA.[28]

For their part, the respondents aver that the instant petition should be dismissed outright because the CA Decision has already become final since the petitioners filed their motion for reconsideration beyond the reglementary 15-day period. They also aver that the motion for extension of time to file a motion for reconsideration, a prohibited pleading, did not suspend the running of the period to file a motion for reconsideration, which is also the period for filing an appeal with this Court. Hence, at the time the present petition was filed with this Court, the period for filing the appeal had already lapsed.[29] The respondents further aver that the petition should likewise be dismissed for lack of a verified statement of material dates. They assert that the Rules of Court requires a separate verified statement of material dates and its incorporation in the body of the petition is not substantial compliance of such requirement.[30]

The respondents aver that they acquired the status as regular employees after rendering one year of service to the petitioner company. They contend that the contracts providing for a fixed period of employment should be struck down as contrary to public policy, morals, good customs or public order as it was designed to preclude the acquisition of tenurial security.[31]

The respondents contend that the order directing their payroll reinstatement was proper considering that the petitioners have failed to actually reinstate them.[32] They assert that the delay in the reinstatement of the 13 respondents could only be attributed to the petitioners; hence, they are liable for withheld salaries to these employees.[33]

It appears that the present petition has, indeed, been filed beyond the reglementary period for filing a petition for review under Rule 45 of the Rules of Court. This period is set forth in Section 2, Rule 45, which provides as follows:

SEC. 2. Time for filing; extension. - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of judgment. ... (Emphasis supplied.)

In conjunction with the said provision, Section 1, Rule 52 of the same Rules provides:

SEC. 1. Period for filing. - A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

Clearly, the period for filing a motion for reconsideration and a petition for review with this Court are the same, that is, 15 days from notice of the judgment. When an aggrieved party files a motion for reconsideration within the said period, the period for filing an appeal is suspended. If the motion is denied, the aggrieved party is given another 15-day period from notice of such denial within which to file a petition for review under Rule 45. It must be stressed that the aggrieved party will be given a fresh 15-day period only when he has filed his motion for reconsideration in due time - on or before the expiration of the original 15-day period. Otherwise, if the motion for reconsideration is filed out of time and no appeal has been filed, the subject decision becomes final and executory.[34] As such, it becomes immutable and can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.[35]

The petitioners received the CA Decision on September 8, 2003; hence, they had until September 23, 2003 within which to file a motion for reconsideration, or an appeal, through a petition for review, with this Court. Instead, the petitioners filed a motion for extension of time to file a motion for reconsideration on September 23, 2003, which is a prohibited pleading.[36] Thus, it did not suspend the running of the period for filing an appeal. Consequently, the period to file a petition for review with this Court also expired on September 23, 2003. Instead of going straight to this Court to attempt to file a petition for review (which had already expired), the petitioners pursued recourse in the CA by filing their motion for reconsideration two days later, or on September 25, 2003. The CA merely noted the same. Dissatisfied, the petitioners subsequently filed a motion to resolve their motion for reconsideration. The CA acted on this motion only on July 19, 2004 and denied the same for lack of merit.

In filing their petition for review with this Court, the petitioners counted the 15-day period from their receipt of the July 19, 2004 CA Resolution on August 4, 2004. Hence, according to their Motion for Extension of Time to File Petition for Review which they filed on August 19, 2004, they had until that day within which to file a petition for review. They then asked the Court that they be granted an extension of 30 days, or until September 21, 2004 within which to file their petition. The Court granted the motion on the belief that the petitioners' motion for reconsideration before the CA was duly filed and that the assailed July 19, 2004 CA Resolution had denied the said motion. Thereafter, the petitioners filed their petition for review on September 20, 2004.

It is, therefore, evident from the foregoing that the present petition was filed way beyond the reglementary period. Hence, its outright dismissal would be proper. The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal has the effect of rendering the judgment final and executory.[37] Just as a losing party has the privilege to file an appeal within the

prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.[38]

Anyone seeking exemption from the application of the reglementary period for filing an appeal has the burden of proving the existence of exceptionally meritorious instances warranting such deviation.[39] In this case, the petitioners failed to prove the existence of any fact which would warrant the relaxation of the rules. In fact, they have not even acknowledged that their petition was filed beyond the reglementary period.

In any case, we find that the CA, the NLRC and the Labor Arbiter correctly categorized the respondents as regular employees of the petitioner company. In *Abasolo v. National Labor Relations Commission*,[40] the Court reiterated the test in determining whether one is a regular employee:

The primary standard, therefore, of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of work performed and its relation to the scheme of the particular business or trade in its entirety. Also, 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.[41]

Thus, we quote with approval the following excerpt from the decision of the CA:

It is obvious that the said five-month contract of employment was used by petitioners as a convenient subterfuge to prevent private respondents from becoming regular employees. Such contractual arrangement should be struck down or disregarded as contrary to public policy or morals. To uphold the same would, in effect, permit petitioners to avoid hiring permanent or regular employees by simply hiring them on a temporary or casual basis, thereby violating the employees' security of tenure in their jobs.

...

Petitioners' act of repeatedly and continuously hiring private respondents in a span of ... 3 to 5 years to do the same kind of work negates their contention that private respondents were hired for a specific project or undertaking only.[42]

Further, factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are generally accorded not only respect but even finality, and bind us when supported by substantial evidence.[43]

WHEREFORE, premises considered, the petition is DENIED DUE COURSE. The Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Rollo, p. 13.

[2] CA Rollo, pp. 45-46.

[3] Rollo, pp. 51-52.

[4] Rollo, pp. 110-111.

- [5]Id. at 112-113.
- [6] CA Rollo, p. 92.
- [7] Rollo, p. 122
- [8]Id. at 126.
- [9] Id. at 129-130.
- [10] Rollo, pp. 133-134.
- [11]Id. at 140-142.
- [12] Id. at 137.
- [13] Id. at 144-150.
- [14] Id. at 150.
- [15]Rollo, pp. 151-166.
- [16] Id. at 189.
- [17]Id. at 36-56.
- [18]Rollo, pp. 49-53.
- [19] Id. at 55.
- [20] CA Rollo, pp. 519-522.
- [21]Id. at 523.
- [22]Id. at 592-596.
- [23] Rollo, pp. 60-62.
- [24] Id. at 18.
- [25] Rollo, pp. 19-20.
- [26] Id. at 21-22.
- [27] Id. at 24-26.
- [28] Rollo, pp. 29-30.
- [29] Id. at 321-326.
- [30] Id. at 332-336.
- [31] Id. at 340-342.
- [32] Rollo, p. 351.
- [33] Id. at 355.
- [34] Santos v. Court of Appeals, G.R. No. 135481, 23 October 2001, 368 SCRA 91.
- [35] Teodoro v. Court of Appeals, G.R. No. 140799, 10 September 2002, 388 SCRA 527.

[36] Habaluyas Enterprises, Inc. v. Japson, G.R. No. L-70895, 30 May 1986, 142 SCRA 208.

[37] Producers Bank of the Philippines v. Court of Appeals, G.R. No. 126620, 17 April 2002, 381 SCRA 185.

[38] Cuevas v. Bais Steel Corporation, G.R. No. 142689, 17 October 2002, 391 SCRA 192.

[39] Neplum, Inc. v. Orbeso, G.R. No. 141986, 11 July 2002, 384 SCRA 466.

[40] G.R. No. 118475, 29 November 2000, 346 SCRA 293.

[41] Id. at 304.

[42] Rollo, pp. 51-52.

[43] Abalos v. Philex Mining Corporation, G.R. No. 140374, 27 November 2002, 393 SCRA 134.

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