HANJIN ENGINEERING AND CONSTRUCTION CO. LTD./ NAM HYUM KIM, PETITIONERS, VS. COURT OF APPEALS, HON. IRENEA R. CENIZA IN HER CAPACITY AS PRESIDING COMMISSIONER,COMMISSIONERS BERN...

G.R. NO. 165910. April 10, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before this Court is a Petition for Certiorari under Rule 65 of the Revised Rules of Court, as amended, with prayer for temporary restraining order/preliminary injunction, seeking the annulment of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 67601 as well as the Resolution[2] denying the motion for reconsideration thereof.

Hanjin Development Co., Ltd., a corporation established and registered in South Korea, is a construction company licensed to do business in the Philippines. It had been contracted by the Philippine Government for the construction of various foreign-financed projects such as the following:

- Iligan-Aurora Road Project (DPWH)

- Lanao-Tubod, Lanao del Norte Project (PRVL GOVT)

- Lanao CP-A Tukuran-Dobliston Road Project (DPWH)

- Bohol BHIP2-C1 Dam Component (NIA)

- Bohol BHIP2-C2 Bayongan & Cayapas Irrigation System (NIA)

- Bohol CP-1 Calape-Tagbilaran-Valencia Section (DPWH)

- Ilocos Sur, Ilocos Norte, Cagayan & Isabela (DPWH)

- Four Bridges CP3 Pampanga, La Union, and Ilocos Sur (DPWH)

- Bacolod Airport CP-1 (Civil Works) (DOTC)[3]

On October 18, 1991 and August 21, 1992, Hanjin and the Philippine Government, through the National Irrigation Administration (NIA), executed contracts for the construction of the Malinao Dam at Pilar, Bohol, with a projected completion period of 1,050 calendar days, including main canal and lateral projects for 750 days.[4] From August 1995 to August 1996, Hanjin contracted the services of 712 carpenters, masons, truck drivers, helpers, laborers, heavy equipment operators, leadmen, engineers, steelmen, mechanics, electricians and others.

In April 1998, 712 employees filed complaints for illegal dismissal and for payment of benefits against Hanjin and Nam Hyun Kim, the officer-in-charge of the project (herein petitioners), before the National Labor Relations Commission (NLRC). The complainants averred that they were regular employees of Hanjin and that they were

separated from employment without any lawful or just cause. Only 521 of the complainants affixed their signatures in the complaints.

Petitioners alleged that the complainants were mere project employees in its Bohol Irrigation Project. Before the project was officially completed in November 1996, they investigated several cases involving some equipment operators who siphoned diesel fuel from equipment and placed them in 20-liter plastic containers. Two of the employees, Sergio Balaba and Emeterio Butron, were charged with qualified theft before the Regional Trial Court (RTC). Moreover, some of the complainants had already migrated to the United States of America or had died, while 117 of them were still under the employ of Hanjin. They was also pointed out that some of the complainants had voluntarily resigned; 14 were absent without prior approved leave; 15 had signed a Motion to Withdraw from the complaint;[5] and many of the complainants were separated on account of the completion of the project.[6] However, petitioners failed to append any document to support their claim.

On May 12, 1998, the Labor Arbiter rendered judgment in favor of the 428 complainants, granting separation pay and attorney's fees to each of them. According to the Labor Arbiter, the complainants were regular employees of petitioner Hanjin, and their claims for underpayment, holiday pay, premium pay for holiday and rest day, 13th month pay, and service incentive leave would be computed after sufficient data were made available.[7]

Petitioners appealed the decision to the NLRC, which affirmed with modification the Labor Arbiter's ruling on January 28, 2000. The NLRC dismissed the complaints of 34 complainants and awarded monetary benefits to the others. The fallo of the decision reads:

> WHEREFORE, premises considered, the Decision appealed from is modified in the following matters:
>
> - Ordering the dismissal of the complaints of the thirty-four (34) complainants as follows: Cesar Malimban, Felipe Torres, Diosdado Visande, Alexander Egargo, Benjie Flores, Alfredo Nalla, Francisco Pabualan, Eleuterio Pajera, Rolando Roa, Tarcito Roa, Elmer Paynados, Rolando Radores, Arturo Agcopra, Arnold Demata, Alex Legazpi, Jimmy Ordinan, Camilo Ofamen, Aristeo Solarte, Bienvenido Simbajon, Lorenzo Lagat, Arsenio Fernandez, Roben Bade, Nestor Butron, Arnaldo Agcopra, Alberto Torrejas, Godoberto Ocena, Fortunato Trasmil, Jr., Wilfredo Cabanacan, Robendario Bade, Arnel Agcopra, Feliciano Apale, Apolinario Butron, Ariston Hilot and Lorenzo Viovicente.
>
> - Ordering the respondent company to pay the following complainants for differential wages as follows:
>
> a. Mamerto Amila - ,812.00
>
> b. Cirilo Lomod - 394.00
>
> c. Marciano Jaum - 615.00
>
> d. Joel Legapa - 2,688.00
>
> e. Candido Ayonan - 3,285.00
>
> f. Marcelo Butron - 2,688.00
>
> g. Gerardo Balili - 1,752.00
>
> h. Estanislao Rejas - 3,285.00
>
> P18,519.00
>
> - Ordering the respondent company to pay the complainants their - a) holiday pay for the years 1993, 1994, 1995 and 1996; b) 13th month pay for the year 1993; c) full backwages from their respective dismissals up to [the] promulgation of this decision (herein computed only up to November 15, 1999) and d) separation pay all

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of which total to P66,690,694.25 (on pages 8-125 hereof);

- Ordering the respondent company to pay complainants attorney's fees equivalent to 10% of all the above awards or in the amount of P6,670,921.32.

All other claims and issues are dismissed for lack of merit.

SO ORDERED.[8]

Petitioners filed a Motion for the Reconsideration of the decision (with a motion to conduct clarificatory hearings) on the following grounds:

I

THE HONORABLE COMMISSION SHOULD HAVE DISCARDED THE COMPLAINT OUTRIGHT AS THERE ARE CLEAR PROOFS OF FALSIFICATION AND INTENTIONAL DECEIT COMMITTED BY COMPLAINANTS.

II

THE HONORABLE COMMISSION SHOULD HAVE CONSIDERED THE FACT THAT RESPONDENT HANJIN BEING IN THE CONSTRUCTION FIRM NECESSARILY COMPLETES ITS CONSTRUCTION AT ONE TIME OR ANOTHER, THEREFORE, COMPLAINANTS ARE PROJECT EMPLOYEES.[9]

Petitioners appended to their motion machine copies of some of the complainants' employment contracts, as well as resignation letters of others who were given monetary awards in the decision, it appearing that their names appeared twice in the list.[10] Petitioners also submitted to the NLRC 11 folders consisting mostly of payrolls.

On July 20, 2001, the NLRC issued a Resolution partially granting petitioners' motion. The fallo of the decision reads:

WHEREFORE, premises considered, the motion for reconsideration is partly granted and our Decision of January 28, 2000 is modified in the following items by:

- deleting the second listing of the following names and their corresponding awards, to wit:

Number

Name

Amount

383 Saturnino Añuber P171,902.52

330 Isagani Anista 174,566.68

347 Gualterio Broce 145,413.36

377 Marcelo Butron 144,653.36

373 Leonardo Dusal 147,989.68

273 Simplicio Lomagod 145,302.52

397 Samuel Painandos 155,466.68

TOTAL P1,085,294.80

- deleting all awards of 13th month pay for 1993;

- deleting the following complainants and the awards given them:

Number

Name

Amount

369 Rodencio Bolo P130,319.54

178 Braulio Butron 133,903.16

360 Eutemio Butron 165,256.76

79 Edgar Dumago 138,843.16

5 Hector Estrada 146,946.24

415 Gilberto Hoffelenia 164,104.16

49 Roberto Obedencio 152,812.73

TOTAL P1,032,185.75

Attorney's fees shall be correspondingly reduced by the above deletions.

All other issues are denied for lack of merit.

SO ORDERED.[11]

Unsatisfied, petitioners filed a Petition for Certiorari under Rule 65 of the Revised Rules of Court in the CA, alleging that -

I

PUBLIC RESPONDENT GRAVELY AND PATENTLY ABUSED THEIR DISCRETION IN DECLARING PRIVATE RESPONDENTS AS NON-PROJECT BUT REGULAR EMPLOYEES AND AWARDING THEM BACKWAGES, SEPARATION PAY AND HOLIDAY PAY.

II

PUBLIC RESPONDENT GRAVELY AND PATENTLY ABUSED THEIR DISCRETION WHEN THEY DISREGARDED THE ERRONEOUS, PERJURIOUS & FALSIFIED COMPLAINTS WITHOUT/LACK OF VERIFICATION.

III

PUBLIC RESPONDENTS GROSSLY, GRAVELY AND PATENTLY ABUSED THEIR DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION WHEN THEY MISAPPROPRIATED THE FACTS, DISREGARDED THEIR TESTIMONIES AND AFFIDAVITS OF PETITIONERS' WITNESSES.[12]

On March 18, 2004, the CA dismissed the petition and affirmed the NLRC's ruling that the dismissed employees (respondents) were regular employees. The CA stressed that petitioners failed to refute the claim of the respondents that they were regular employees. Petitioners moved to reconsider the decision, which the CA denied.

In the instant Petition for Certiorari under Rule 65 of the Revised Rules of Court, petitioners allege that:

I

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PUBLIC RESPONDENTS ARE GUILTY OF GRAVE AND PATENT ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DECLARING PRIVATE RESPONDENTS-COMPLAINANTS AS REGULAR EMPLOYEES WHEN IN FACT, LAW, AND EVIDENCE THEY ARE PROJECT EMPLOYEES.

II

THERE IS GRAVE AND MANIFEST ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION ON THE PART OF PUBLIC RESPONDENTS IN AWARDING PRIVATE RESPONDENTS-COMPLAINANTS THEIR MONEY CLAIMS WHEN THEY ARE NOT ENTITLED TO THE SAME BEING PROJECT EMPLOYEES AND NOT REGULAR EMPLOYEES. THE PAYROLLS PRESENTED AS EXHIBITS ALL UNIFORMLY SHOW THAT ALL THE MONETARY ENTITLEMENTS OF THE PRIVATE RESPONDENTS HAVE BEEN DULY PAID.

III

PUBLIC RESPONDENTS GRAVELY AND PATENTLY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN THEY DISREGARDED THE ERRONEOUS, PERJURIOUS, AND FALSIFIED COMPLAINTS WITHOUT PROPER VERIFICATION.

IV

THE HONORABLE PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN THEY PROCEEDED TO HEAR THE COMPLAINTS AGAINST PETITIONER NAM HYUM KIM, HE BEING A MERE OFFICER/MANAGER OF THE CORPORATION.[13]

Petitioners maintain that respondents were hired for a specific project-the Bohol Irrigation Project, which was to be completed on a day certain (1,050 calendar days for the main canal and 750 days for the lateral projects). This is evidenced by respondents' contracts of employment which petitioners had appended to their Motion for Reconsideration before the NLRC, which was, in turn, appended to their Formal Offer of Exhibits.[14] Petitioners also argue that respondents had to be hired on a project-to-project basis, as it would be absurd for them to employ regular employees for each project; in that case, thousands of regular employees would be employed for their projects.

In their Comment on the petition, respondents aver that petitioners' recourse to Rule 65 of the Revised Rules of Court, as amended, is mal apropos. They cite St. Martin Funeral Home v. NLRC,[15] where the Court ruled that petitions for certiorari seeking to review NLRC decisions should initially be filed in the CA, conformably with the principle of hierarchy of courts. Thus, petitioners should have filed a petition for review on certiorari under Rule 45 of the said Rules. Moreover, the only issues raised by petitioners are factual in nature, not proper in a petition for certiorari under Rule 65. Respondents point out that petitioners failed to adduce in evidence the original copies of their contracts of employment and copies of the employment termination reports which petitioners claim to have submitted to the DOLE. Respondents stress that petitioners merely submitted machine copies of the same in their Motion for Reconsideration of the NLRC decision.

In their Reply, petitioners aver that their appeal under Rule 65 of the Revised Rules of Court is proper, and that there is no procedural rule which provides that the remedy of the aggrieved party in a labor case is to file a petition under Rule 45. Petitioners aver that contrary to respondents' allegations, the Court in St. Martin Funeral Home[16] held that judicial review of labor disputes is limited to the narrower confine of the special civil actions of certiorari under Rule 65. Petitioners insist that the filing of appeals under Rule 45 of the Rules is not applicable in labor cases.

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We agree with respondents' contention that petitioners' recourse to this Court via Rule 65 of the Revised Rules of Court was inappropriate.

Section 1, Article VIII, of the Constitution provides that judicial power shall be vested in one Supreme Court and in such other courts as may be established by law. Judicial power includes the duty of the courts of justice to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of bench or instrumentality of the government. The Court has original jurisdiction over petitions for certiorari, prohibitions and mandamus,[17] and may review on appeal or certiorari as the law on the Rules of Court may provide final judgment and orders of lower courts, and cases in which only questions of law is involved. However, if a petition for certiorari involves the acts or omissions of a quasi-judicial agency and unless otherwise provided by law or the Rules of Court, the petition for certiorari shall be final and is cognizable only by the Court of Appeals. One such quasi-judicial agency is the NLRC. Inasmuch as the appellate court has exclusive appellate jurisdiction over quasi-judicial agencies under Rule 43, petitions for review on certiorari should be filed only with the CA, unless otherwise provided by law or the Rules.[18] Moreover, under Rule 45, a party appealing from judgments or final orders or resolutions of the CA, the Sandiganbayan, the Regional Trial Court or any other court, unless authorized by law, may file with the Supreme Court a verified petition for review on certiorari, raising only questions of law which must be distinctly set forth.

Thus, under the Constitution and the Revised Rules of Court, judicial review of the decisions or final orders of the NLRC should be filed with the CA under Section 5 of Rule 65, on the ground that the NLRC has committed grave abuse of discretion amounting to excess or lack of jurisdiction. The remedy of the aggrieved party from the CA decision, in turn, shall be by petition for review on certiorari with this Court under Rule 45.

The aggrieved party is proscribed from assailing a decision or final order of the CA via Rule 65 because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law. In this case, petitioners have an adequate remedy, namely, a petition for review on certiorari under Rule 45 of the Rules of Court. It must be stressed that the remedies of appeal under Rule 45 and an original action for certiorari under Rule 65 are mutually exclusive. Indeed, in Land Bank of the Philippines v. Court of Appeals,[19] the Court had the occasion to state:

> The general rule is that a cert writ will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in the ordinary course of law and that of certiorari under Rule 65 of the Revised Rules of Court are mutually exclusive and not alternative or cumulative. Hence, the special civil action for certiorari under Rule 65 is not and cannot be a substitute for an appeal, where the latter remedy is available. x x x
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> x x x x
>
> The proper recourse of the aggrieved party from a decision of the CA is a petition for review on certiorari under Rule 45 of the Revised Rules of Court. On the other hand, if the error subject of the recourse is one of jurisdiction, or the act complained of was perpetrated by a quasi-judicial officer or agency with grave abuse of discretion amounting to lack or excess of jurisdiction, the proper remedy available to the aggrieved party is a petition for certiorari under Rule 65 of the said Rules. As expostulated by the Court in Fortich v. Corona:
> Anent the first issue, in order to determine whether the recourse of petitioners is proper or not, it is necessary to draw a line between an error of judgment and an error of jurisdiction. An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. On the other hand, an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction. This error is correctible only by the extraordinary writ of certiorari.

The supervisory jurisdiction of the court to issue a cert writ cannot be exercised in order to review the judgment of

the lower court as to its intrinsic correctness, either upon the law or the facts of the case.

The general rule is that questions or findings of facts in the lower court, board or tribunal, and the probative weight and sufficiency of the evidence upon which the said findings were based are not reviewable by certiorari under Rule 65 of the Revised Rules of Court. However, the sufficiency of the evidence may be inquired into in order to determine whether jurisdictional facts were or were not proved or whether the lower court had exceeded its jurisdiction. This exception arises out of the most important office and function of the writ - the keeping of the lower court and tribunal within their jurisdiction. If the decision of the lower court as to the sufficiency of the evidence to establish jurisdictional facts were not reviewable, certiorari would be of no avail as a remedy against an assumption of jurisdiction. For the purpose of enabling the reviewing court to determine whether jurisdictional facts were established, it may delve into and review the evidence on which such facts were based.[20]

Concededly, there were occasions when this Court treated a petition for certiorari under Rule 65 of the Revised Rules of Court as one filed under Rule 45, provided the petition is filed within the prescribed period, and that there are special circumstances alleged therein. The circumstances prevailing in the instant case do not justify a deviation from the general rule. For one thing, the petition was filed way beyond the reglementary period allowed under Rule 45 without any justifiable reason therefor; for another, petitioners did not proffer any reasonable explanation which would warrant a deviation from the general rule.

Section 1 of Rule 45 provides:

> Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.
>
> Section 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 the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

As gleaned from the records, petitioners received a copy of the assailed CA decision on March 24, 2004 and filed its motion for reconsideration on April 6, 2004.[21] Petitioners received a copy of the Order dated October 11, 2004 denying their Motion for Reconsideration on October 20, 2004. Instead of filing a petition under Rule 45, they filed on November 23, 2004[22] the instant Petition for Certiorari under Rule 65.

Petitioners had until November 4, 2004 within which to file a petition for review on certiorari on pure questions of law. However, as already stated, petitioners filed their petition in this Court only on November 23, 2004;[23] indubitably, the decision of the CA had by then already become final and executory, beyond the purview of this Court to act upon.[24]

> [S]ince the Court of Appeals had jurisdiction over the petition under Rule 65, any alleged errors committed by it in the exercise of its jurisdiction would be errors of judgment which are reviewable by timely appeal and not by a special civil action of certiorari. If the aggrieved party fails to do so within the reglementary period, and the decision accordingly becomes final and executory, he cannot avail himself of the writ of certiorari, his predicament being the effect of his deliberate inaction.
>
> The appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Rules of Court, now Rule 45 and Rule 65, respectively, of the 1997

> Rules of Civil Procedure. Rule 45 is clear that the decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. Under Rule 45, the reglementary period to appeal is fifteen (15) days from notice of judgment or denial of motion for reconsideration.
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> x x x x
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> For the writ of certiorari under Rule 65 of the Rules of Court to issue, a petitioner must show that he has no plain, speedy and adequate remedy in the ordinary course of law against its perceived grievance. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency. In this case, appeal was not only available but also a speedy and adequate remedy.[25]

Clearly, petitioners interposed the present special civil action of certiorari under Rule 65 as an alternative to their petition not because it is the speedy and adequate remedy but to make up for the loss of their right of an ordinary appeal. It is elementary that the special civil action of certiorari is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case. A special civil action under Rule 65 of the Rules of Court cannot cure a party's failure to timely file a petition for review on certiorari under Rule 45 of the Revised Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45, especially if such loss or lapse was occasioned by a party's neglect or error in the choice of remedies. There are exceptions to this rule: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. None of these recognized exceptions, however, is present in the case at bar. Petitioners failed to show circumstances that would justify a deviation from the general rule as to make available a petition for certiorari in lieu of taking an appeal.[26]

Whether or not respondents were project employees or regular employees is a question of fact. To arrive at a conclusion, the Court will have to delve into and weigh and calibrate the documentary and testimonial evidence of the parties. However, the Court is proscribed from re-examining the evidence on record and weighing the same in a petition for certiorari under Rule 65 of the Revised Rules of Court. It must be stressed that the only issue before the Court in a petition for certiorari under Rule 65 is whether the CA committed grave abuse of discretion amounting to excess or lack of jurisdiction in its decision. In this case, the CA aptly stated, thus:

> What is before us is a petition for certiorari under Rule 65 of the Rules of Court which will lie only in cases where a grave abuse of discretion or an act without or in excess of jurisdiction is clearly shown to have been committed by the respondent Commission, and the Court's jurisdiction to review decisions or resolutions of the respondent NLRC does not include a correction of its evaluation of the evidence. Moreover, it is a fundamental rule that the factual findings of quasi-judicial agencies like the respondent NLRC, if supported by substantial evidence, are generally accorded not only great respect but even finality, and are binding upon this Court, unless the petitioner is able to clearly demonstrate that respondent Commission had arbitrarily disregarded evidence before it or had misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated, or if the findings of the Labor Arbiter and the NLRC are contrary to each other.[27]

It was incumbent upon petitioners to prove that respondents were separated from their employment due to a lawful or just cause. Petitioners were burdened to prove that respondents were merely project workers, which burden they failed to discharge. Indeed, the Labor Arbiter ruled that

> From the facts of the case, it could be concluded that the complainants were engaged to perform, as they had

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been performing activities which were usually necessary or desirable in the usual business or trade of the employer. The facts, as undisputed, remain that complainants were hired as masons, carpenters, truck drivers, laborers, heavy equipment operators, etc., which were undeniably desirable and usually necessary in the usual business or trade of respondent construction company.

Respondent's allegation that the different schedule and time frame of the different programs of work were all known to the employees (now the complainants) and upon the completion of one section, the employees had to move to the next has not been substantiated with documentary evidence. No contract of employment was presented or even a simple memorandum was shown to prove that the complainants were really informed of the nature of their employment. On the contrary, by respondent's own acts, complainants were even made to believe that they were respondents' regular employees by giving complainants benefits which were legally due only to regular employees such as paying their separation pay, service incentive leave pay, and 13th month pay. Furthermore, respondents' admission that "upon completion of one section, the employees had to move to the next" is only a clear indication that a process of repeated hiring occurs and as such the complainants are classified to be members of a "work pool." There can therefore be no escape from the conclusion that complainants were regular employees of the respondent. (Caromol v. NLRC, G.R. No. 102973, August 23, 1993).[28]

The NLRC affirmed the Labor Arbiter's findings and declared:

First. We consider the appeal by respondent Hanjin and discuss the grounds raised simultaneously.

While respondent alleged that "complainants all signed a contract of employment at the time they were hired indicating therein the particular project they will be working on, the period and other conditions provided in their contracts which complainants fully knew and understood," nowhere in the records can the said contracts be found. Moreover, let it be stressed that under Department Order No. 19, Series of 1993 on project employment, six (6) indicators are enumerated therein and one of which is that "

"(T)he termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work x x x."

In this particular case, the records do not show that a similar report was ever made by respondent to the Department of Labor and Employment. Such failure of respondent employer to report to the nearest employment office of the Department of Labor, the termination of the workers it claimed as project employees at the time it completed the project, is proof that complainants were not project employees.

The principal test for determining whether particular employees are properly characterized as project employees is: whether or not the project employees were assigned to carry out a specific project or undertaking, the duration of which were specified at the time the employees were engaged for that project. Predetermination of the duration or period of project employment is essential in resolving whether one is a project employee or not. In the instant case, the completion of the project for which the complainants were hired was not determined at the start of their employment, there being no substantial proof thereof. The fact that complainants had rendered more than one year of service at the time of their dismissal and there being no substantial evidence to support that they were engaged to work on a specific project or undertaking, overturns respondent company's allegation that complainants were project employees hired for a specific fixed project for a limited period of time.

Complainants herein were, therefore, non-project employees, but regular employees. Admittedly, being a duly licensed contractor firm in the Philippines, respondent is the awardee of several construction projects and in many occasions it has been given the priority in the awarding of subsequent projects.

In the light of the above facts and circumstances, the respondent's main defense that completion of the project

worked on by the complainants constitute a valid cause of termination is unsustainable. To repeat, there is no substantial evidence on record to sustain this contention. The mere allegation of the respondents that under their employment contracts the complainants were made to understand that they were project employees is definitely not persuasive or unworthy of credence. The best evidence of which would have been the alleged contracts.

We credit, however, having been duly supported by substantial evidence, the following; hence, they are excluded as parties complainants:

1. Cesar C. Malimban Who died on September 22, 1994, a date ahead than the filing of the 3 cases.

2. Felipe Torres
3. Diosdado Visande
4. Alexander Egargo
5. Benjie Flores
6. Alfredo Nalla
7. Francisco Pabualan
8. Eleuterio Pareja
9. Rolando Roa
10. Tarcito Roa
11. Elmer Paynandos
12. Rolando Radores
13. Arturo Agcopra
14. Arnold Demata
15. Alex Legaspi
16. Jimmy Ordinan
17. Camilo Ofamen
18. Aristeo Solarte
19. Bienvenido Simbajon
20 Lorenzo Lagat
21. Arsenio Fernandez
22. Roben Bade
23. Nestor Butron
24. Arnaldo Agcopra
25. Alberto Torrejas
26. Godoberto Ocena
27. Fortunato Trasmil, Jr.
28. Wilfredo Cabanacan
29. Rotendario Bade
30. Arnel Agcopra
31. Feliciano Apale
32. Apolinario Butron
33. Ariston Hilot
34. Lorenzo Viovicente
35. Felix Balaba

These employees signed duly notarized waivers/quitclaims and who did not recant later. In the absence of evidence showing the contrary, said quitclaims were executed voluntarily and without any force or intimidation.

Who voluntarily resigned and migrated to Hawaii.

We dismiss the rest of respondent Hanjin's issues for being without merit.[29

Petitioners submitted to the NLRC dubious machine copies of only some of respondents' contracts, including alleged employment termination reports submitted to the DOLE. The NLRC found the contracts barren of probative weight and utterly insufficient to buttress the contention of petitioners that respondents were only project employees:

> Additionally, witnesses for respondent namely Nam Hyum Kim and Catalina Gudilos, project manager and cashier of Hanjin, respectively, substantiated their allegations that complainants were project employees by the existing contracts for the (1) Malinao Dam and the (2) Malinao main canal, laterals and structures concluded between Hanjin and NIA. The first project was entered into on October 18, 1991 and its construction was completed on May 8, 1996, while the second project was signed on August 21, 1992 and its works finished on February 29, 1996. They identified, likewise, machine copies of the "Appointment as Contract Worker" of some complainants, some machine copies and not certified true copies of the reports of termination filed before the DOLE at Bohol. There is only one original copy of said report to DOLE which shows that the terminations of Felipe Auguis and Sergio Oscar Butron on September 16, 1994 and September 20, 1994, respectively, for the alleged reason of "voluntary resignation."
>
> Contary to the representation of respondent's counsel, the original copies of the reports made to DOLE were never produced and submitted to this Commission. Neither were they presented for comparison with the machine copies. These machine copies were not also certified as true copies by the DOLE. In this light, we cannot give any evidentiary weight on said DOLE reports.
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> The actual continuous employment of complainants by respondent Hanjin since 1991 until 1995 overcomes the piecemeal "appointments" covering for periods of six (6) months or less. From these short term but repeated "appointments," it is apparent that the periods have been imposed to preclude the acquisition of tenurial security by the employee and which kind of employment contracts should be disregarded for being contrary to public policy.[30]

The CA, for its part, affirmed the findings of the Labor Arbiter and the NLRC, and held that respondents were regular employees of petitioner Hanjin:

> In the instant case, petitioners belatedly submitted copies of "Appointment(s) as Contract Worker(s)" allegedly signed by private respondents at the time they commenced work, and which provided for an employment of six (6) months only, a period applicable for probationary employment. While it may be allowed that in the instant case the workers were initially hired for specific projects or undertakings for a period of six (6) months or less, the repeated re-hiring and the continuing need for their services over a long span of time (from 1991 to 1995) have undeniably made them regular employees. Thus, we held that where the employment of project employees is extended long after the supposed "appointments" has been finished, the employees are removed from the scope of project employees and considered regular employees. How can one properly explain private respondents" continuous employment from 1991 to 1996 when their appointment was for a measly period of six months? It is clear, therefore, that as aptly established by the NLRC, these piecemeal "appointments" have been imposed to preclude the acquisition of tenurial security. While length of time may not be a controlling test for project employment, it can be a strong factor in determining whether the employee was hired for a specific undertaking or in fact tasked to perform functions which are vital, necessary and indispensable to the usual business or trade of the employer.
>
> Furthermore, it is noteworthy to emphasize that these "appointments" were submitted only as attachments to petitioners' motion for reconsideration. As borne out by the records and even mentioned in the decision of the Labor Arbiter, petitioners were already required during the initial hearings before the Labor Arbiter to "submit additional documents in their possession necessary to support their case." Instead of complying, petitioners still had to wait for the adverse decision of the NLRC before they submitted the same. Likewise, in the NLRC's assailed decision, petitioners' failure to present these "appointments" were adverted to, thus, the NLRC ruled that "nowhere in the records can the said contracts be found." Despite sufficient time, from the time they were

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> required by the Labor Arbiter to present additional evidence up to the time the appeal was resolved by the NLRC, petitioners were not able to present said employment contracts. Petitioners' hesitation to submit the same is well-founded. It is a well-settled rule that when the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary.
>
> Moreover, it is required under Policy Instruction No. 20, Series of 1993, that in case of project employees, the termination of their employment in the particular project or undertaking must be reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within thirty (30) days following the date of his separation from work. In Ochoco v. National Labor Relations Commission, the failure of the employer to report to the nearest employment office the termination of employment of workers everytime it completed a project was considered by this Court as proof that the dismissed employees were not project employees but regular employees. On this requirement, petitioners were silent, until the Decision of the NLRC reminded them. To prove that petitioners allegedly complied with said requirement, they again belatedly submitted machine copies of reports allegedly made to the DOLE of Bohol. To explain away their failure to produce certified true copies of the same, petitioners allege that the NLRC should have given evidentiary weight to the machine copies which are for all legal intents and purposes already public records in the custody of the DOLE duly recorded in a public office. The same argument can be taken against herein petitioners in that, for all the time it took them to produce said machine copies, it would have been more prudent for them to have it certified by the DOLE in Bohol. Under the Rules of Evidence, and as stated by petitioners, the original document need not be produced when the same is a public record in the custody of a public office or is recorded in a public office. Thus, proof of such documents may be made by a duly authenticated copy of the original document or record. It is essential, furthermore, that the copies be made in the manner provided by the rules and that all requirements in connection therewith be complied with before such copy be properly admissible in evidence. Considering that the documents submitted by petitioners are mere machine copies, the NLRC cannot be compelled to give them evidentiary weight.[31]

The appellate court, the NLRC and the Labor Arbiter are thus one in finding that respondents were not project employees, and in sustaining respondents' claim of illegal dismissal due to petitioners' failure to adduce contrary evidence. Well-settled is the rule that findings of fact of quasi-judicial agencies, like the NLRC, are accorded not only respect but at times even finality if such findings are supported by substantial evidence. Such findings of facts can only be set aside upon showing of grave abuse of discretion, fraud or error of law,[32] none of which have been shown in this case.

IN LIGHT OF ALL THE FOREGOING, the petition is DISMISSED. Costs against the petitioners.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Danilo B. Pine (retired), with Associate Justices Cancio C. Garcia (now a member of this Court) and Renato C. Dacudao, concurring; rollo, pp. 66-88.

[2] Rollo, p. 90.

[3] Id. at 27.

[4] Id. at 15.

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[5] Id. at 177.

[6] Id. at 127-166.

[7] Id. at 337, 401.

[8] Rollo, pp. 327-328.

[9] Id. at 415.

[10] Id. at 413-435.

[11] Id. at 335-336.

[12] Id. at 79.

[13] Id. at 25.

[14] Id. at 436.

[15] 356 Phil. 811, 824 (1998).

[16] Supra.

[17] Section 1, Article 5, Constitution.

[18] Feria, 1997 Rules of Procedure, 265.

[19] 456 Phil. 755 (2003).

[20] Id. at 785-788.

[21] Rollo, p. 92.

[22] Id. at 3.

[23] Id. at 3.

[24] Zacate v. Commission on Elections, G.R. No. 144678, March 1, 2001, 353 SCRA 441, 449; Republic v. Court of Appeals, 379 Phil. 92, 101 (2000); National Irrigation Administration v. Court of Appeals, 376, Phil. 362, 371 (1999).

[25] Asian Transmission Corporation v. Court of Appeals, G.R. No. 144664, March 15, 2004, 425 SCRA 478, 483-484.

[26] Chua v. Santos, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 374-375.

[27] Rollo, p. 87.

[28] Id. at 345-346.

[29] Id. at 204-206.

[30] Id. at 332-333.

[31] Id. at 85-87.

[32] Felix v. Enertech Systems Industries, Inc., G.R. No. 142007, March 28, 2001, 355 SCRA 680, 687.

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