

ROMMEL C. OREGAS, DARWIN R. HILARIO AND SHERWIN A. ARBOLEDA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, DUSIT HOTEL NIKKO, PHILIPPINE HOTELIER’S INCORPORATED AND FVA ...

G.R. No. 166757. July 21, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the Decision[1] dated October 28, 2004, as well as the Resolution[2] dated January 14, 2005 of the Court of Appeals in CA-G.R. SP No. 82237, which had affirmed the Resolution[3] dated August 25, 2003 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 028616-01. The NLRC modified the Decision[4] dated March 6, 2001 of the Labor Arbiter in NLRC NCR (S) 30-09-03734-00 and ordered respondent FVA Manpower Training Center & Services (FVA) to pay petitioners separation pay of one-half month pay for every year of service.

The facts are as follows:

On various dates from 1987 to 1999, petitioners Rommel C. Oregas, Darwin R. Hilario and Sherwin A. Arboleda, worked as valet parking attendants and door attendants in respondent Dusit Hotel Nikko (Dusit). As evidence of their employment, they have employment contracts with respondent FVA.

Sometime in 2000, FVA recalled petitioners from Dusit. Petitioners then instituted a complaint for illegal dismissal, regularization, premium pay for holiday and rest day, holiday pay, service incentive leave pay, 13th month pay and attorney's fees against respondents Dusit, Philippine Hotelier's, Inc., (in its capacity as managing company of Dusit) and FVA.

Petitioners alleged that despite the length of their service, Dusit never granted them the status and benefits of a regular employee. Thus, when the rank and file employees' union of Dusit learned that petitioners were entitled to regularization, Dusit immediately terminated their services due to "end of contract."

Dusit and FVA both argued that FVA is a legitimate job contractor registered with the Department of Labor and Employment (DOLE) and the Department of Trade and Industry (DTI). Pursuant to their Contract for Services[5] for the supply of valet parking and door attendant services, FVA assigned petitioners to Dusit. Accordingly, petitioners' real and actual employer is FVA.

On March 6, 2001, Labor Arbiter Potenciano S. Cañizares, Jr. rendered a decision dismissing the complaint for lack of merit. He declared that petitioners failed to prove that they were employees of Dusit. Petitioners themselves admitted that they transferred to FVA after their previous placement agencies terminated their contracts of services with Dusit. Labor Arbiter Cañizares also noted that petitioners signed application and employment contracts with FVA and were under its payrolls and accounts. Thus, FVA was petitioners' employer. Finally, he ruled that petitioners were merely recalled and not dismissed from the service by FVA.

On appeal, the NLRC issued a Resolution dated August 25, 2003, modifying the decision of Labor Arbiter Cañizares. The NLRC observed that the four-fold test in determining the existence of an employer-employee relationship is present in petitioners' relationship with FVA. On the matter of selection and engagement, records showed that petitioners applied with and were employed by FVA. Although they were required to test drive by Dusit, it was done only to verify if they had the necessary skills and competence required by the job. On the matter of control, it was established that petitioners maintained their daily time records with FVA. On the matter of dismissal, FVA exercised its power to dismiss when it recalled petitioners from Dusit. Finally, on the matter of payment of wages, it is undisputed that petitioners were under the payrolls and accounts of FVA. Nevertheless, the NLRC noted that after petitioners' recall, they were no longer given new assignments. Since more than six months have already lapsed, petitioners were deemed to have been constructively dismissed and therefore entitled to separation pay of one-half month pay for every year of service.

The decretal portion of the resolution reads:

WHEREFORE, premises considered, the appeal is partly GRANTED and the Decision dated 06 March 2001 is hereby MODIFIED ordering respondent-appellee FVA to pay separation pay of one-half month pay for every year of service to complainants-appellants, to wit:

1) Arboleda - P 8,716.50

2) Hilario - P 11,622.00

3) Oregas - P 11,622.00

The appeal of the other complainants-appellants namely Jonathan Palacol, Allan Garcia, Rio Rose Tresnado, Maricel Cadayona, Herman Mosaso, Anthony Paggao, Mark Clint Morado, Ramina Espinosa, Jorge Coronado, Ruben de Jesus and Luis Lim was earlier DISMISSED due to the amicable settlement reached by the parties.

SO ORDERED.[6]

Petitioners elevated the case to the Court of Appeals which affirmed the NLRC resolution. Reconsideration having been denied, petitioners now come before us alleging that the appellate court erred:

I.

... IN FINDING THAT RESPONDENT FVA IS AN INDEPENDENT CONTRACTOR.

II.

... IN CONCLUDING THAT NO EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN PETITIONERS AND RESPONDENT HOTEL BY APPLYING THE FOUR-FOLD TEST.[7]

After careful consideration of the averments and arguments of the parties, we find that the instant petition lacks merit.

In a petition for review on certiorari as a mode of appeal under Rule 45 of the Rules of Court, the petitioner can raise only questions of law because the Supreme Court is not the proper venue to consider a factual issue as it is not a trier of facts.[8] Findings of fact of administrative bodies charged with their specific field of expertise are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous evaluation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[9]

In this case the Labor Arbiter, the NLRC, and the Court of Appeals were unanimous in finding that FVA was a legitimate job contractor. Among the circumstances that established the status of FVA as a legitimate job

contractor are: (1) FVA is registered with the DOLE and the DTI;[10] (2) FVA has a Contract for Services with Dusit for the supply of valet parking and door attendant services;[11] (3) FVA has an independent business and provides valet parking and door attendant services to other clients like Mandarin Oriental, Manila Hotel, Peninsula Manila Hotel, Westin Philippine Plaza, Golden B Hotel, Pan Pacific Manila Hotel, and Strikezone Bowling Lane;[12] and (4) FVA's total assets from 1997 to 1999 amount to P1,502,597.70 to P9,021,335.13.[13] In addition, it provides the uniforms and lockers of its employees.[14]

Moreover, by applying the four-fold test used in determining an employer-employee relationship, the status of FVA as the employer of petitioners is indubitably established. First, petitioners applied and signed employment contracts with FVA. They were merely assigned to Dusit conformably with the Contract for Services between FVA and Dusit. Second, FVA assigned a supervisor in Dusit to monitor petitioners' attendance, leaves of absence, performance and conduct. Petitioners also maintained their daily time records with FVA. Third, petitioners were duly notified by FVA that they would be assigned to Dusit for five months only. Thereafter, they may either be recalled for transfer to other clients or be reassigned to Dusit depending on the result of FVA's evaluation of their performance. In this case, FVA opted to recall petitioners from Dusit. Fourth, while FVA billed Dusit for the services rendered, it was actually FVA which paid petitioners' salaries. Worthy of note, FVA registered petitioners with the Bureau of Internal Revenue and the Social Security System as its employees.

In summary, this Court accepts as established the fact that FVA is a legitimate job contractor and, in contemplation of law, the employer of petitioners.

WHEREFORE, the instant petition is DENIED for lack of merit. The Decision dated October 28, 2004, as well as the Resolution dated January 14, 2005 of the Court of Appeals in CA-G.R. SP No. 82237 is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago,[*]Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

* Additional member in place of Associate Justice Arturo D. Brion who is on leave.

[1] Rollo, pp. 61-76. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Lucas P. Bersamin and Vicente S.E. Veloso concurring.

[2] Id. at 78-79.

[3] Records, pp. 631-641.

[4] Id. at 348-357.

[5] Id. at 98-101.

[6] Id. at 641.

[7] Rollo, p. 39.

[8] Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment (DOLE), G.R. No. 157146, April 29, 2005, 457 SCRA 730,739.

[9] United Special Watchman Agency v. Court of Appeals, G.R. No. 152476, July 8, 2003, 405 SCRA 432, 438.

[10] Records, pp. 102-103.

[11] Id. at 98-101.

[12] Id. at 317.

[13] Id. at 189-202.

[14] Id. at 177.

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