

ATOK BIG WEDGE COMPANY, INC., PETITIONER, VS. JESUS P. GISON, RESPONDENT.

G.R. No. 169510. August 08, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari seeking to reverse and set aside the Decision[1] dated May 31, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 87846, and the Resolution[2] dated August 23, 2005 denying petitioner's motion for reconsideration.

The procedural and factual antecedents are as follows:

Sometime in February 1992, respondent Jesus P. Gison was engaged as part-time consultant on retainer basis by petitioner Atok Big Wedge Company, Inc. through its then Asst. Vice-President and Acting Resident Manager, Rutillo A. Torres. As a consultant on retainer basis, respondent assisted petitioner's retained legal counsel with matters pertaining to the prosecution of cases against illegal surface occupants within the area covered by the company's mineral claims. Respondent was likewise tasked to perform liaison work with several government agencies, which he said was his expertise.

Petitioner did not require respondent to report to its office on a regular basis, except when occasionally requested by the management to discuss matters needing his expertise as a consultant. As payment for his services, respondent received a retainer fee of P3,000.00 a month,[3] which was delivered to him either at his residence or in a local restaurant. The parties executed a retainer agreement, but such agreement was misplaced and can no longer be found.

The said arrangement continued for the next eleven years.

Sometime thereafter, since respondent was getting old, he requested that petitioner cause his registration with the Social Security System (SSS), but petitioner did not accede to his request. He later reiterated his request but it was ignored by respondent considering that he was only a retainer/consultant. On February 4, 2003, respondent filed a Complaint[4] with the SSS against petitioner for the latter's refusal to cause his registration with the SSS.

On the same date, Mario D. Cera, in his capacity as resident manager of petitioner, issued a Memorandum[5] advising respondent that within 30 days from receipt thereof, petitioner is terminating his retainer contract with the company since his services are no longer necessary.

On February 21, 2003, respondent filed a Complaint[6] for illegal dismissal, unfair labor practice, underpayment of wages, non-payment of 13[th] month pay, vacation pay, and sick leave pay with the National Labor Relations Commission (NLRC), Regional Arbitration Branch (RAB), Cordillera Administrative Region, against petitioner, Mario D. Cera, and Teofilo R. Asuncion, Jr. The case was docketed as NLRC Case No. RAB-CAR-02-0098-03.

Respondent alleged that:

x x x [S]ometime in January 1992, Rutillo A. Torres, then the resident manager of respondent Atok Big Wedge Co., Inc., or Atok for brevity, approached him and asked him if he can help the company's problem involving the 700 million pesos crop damage claims of the residents living at the minesite of Atok. He participated in a series of dialogues conducted with the residents. Mr. Torres offered to pay him P3,000.00 per month plus representation expenses. It was also agreed upon by him and Torres that his participation in resolving the problem was temporary and there will be no employer-employee relationship between him and Atok. It was also agreed upon that his compensation, allowances and other expenses will be paid through disbursement vouchers.

On February 1, 1992 he joined Atok. One week thereafter, the aggrieved crop damage claimants barricaded the only passage to and from the minesite. In the early morning of February 1, 1992, a dialogue was made by Atok and the crop damage claimants. Unfortunately, Atok's representatives, including him, were virtually held hostage by the irate claimants who demanded on the spot payment of their claims. He was able to convince the claimants to release the company representatives pending referral of the issue to higher management.

A case was filed in court for the lifting of the barricades and the court ordered the lifting of the barricade. While Atok was prosecuting its case with the claimants, another case erupted involving its partner, Benguet Corporation. After Atok parted ways with Benguet Corporation, some properties acquired by the partnership and some receivables by Benguet Corporation was the problem. He was again entangled with documentation, conferences, meetings, planning, execution and clerical works. After two years, the controversy was resolved and Atok received its share of the properties of the partnership, which is about 5 million pesos worth of equipment and condonation of Atok's accountabilities with Benguet Corporation in the amount of P900,000.00.

In the meantime, crop damage claimants lost interest in pursuing their claims against Atok and Atok was relieved of the burden of paying 700 million pesos. In between attending the problems of the crop damage issue, he was also assigned to do liaison works with the SEC, Bureau of Mines, municipal government of Itogon, Benguet, the Courts and other government offices.

After the crop damage claims and the controversy were resolved, he was permanently assigned by Atok to take charge of some liaison matters and public relations in Baguio and Benguet Province, and to report regularly to Atok's office in Manila to attend meetings and so he had to stay in Manila at least one week a month.

Because of his length of service, he invited the attention of the top officers of the company that he is already entitled to the benefits due an employee under the law, but management ignored his requests. However, he continued to avail of his representation expenses and reimbursement of company-related expenses. He also enjoyed the privilege of securing interest free salary loans payable in one year through salary deduction.

In the succeeding years of his employment, he was designated as liaison officer, public relation officer and legal assistant, and to assist in the ejection of illegal occupants in the mining claims of Atok.

Since he was getting older, being already 56 years old, he reiterated his request to the company to cause his registration with the SSS. His request was again ignored and so he filed a complaint with the SSS. After filing his complaint with the SSS, respondents terminated his services.[7]

On September 26, 2003, after the parties have submitted their respective pleadings, Labor Arbiter Rolando D. Gambito rendered a Decision[8] ruling in favor of the petitioner. Finding no employer-employee relationship between petitioner and respondent, the Labor Arbiter dismissed the complaint for lack of merit.

Respondent then appealed the decision to the NLRC.

On July 30, 2004, the NLRC, Second Division, issued a Resolution[9] affirming the decision of the Labor Arbiter. Respondent filed a Motion for Reconsideration, but it was denied in the Resolution[10] dated September 30,

2004.

Aggrieved, respondent filed a petition for review under Rule 65 of the Rules of Court before the CA questioning the decision and resolution of the NLRC, which was later docketed as CA-G.R. SP No. 87846. In support of his petition, respondent raised the following issues:

- a) Whether or not the Decision of the Honorable Labor Arbiter and the subsequent Resolutions of the Honorable Public Respondent affirming the same, are in harmony with the law and the facts of the case;
- b) Whether or not the Honorable Labor Arbiter Committed a Grave Abuse of Discretion in Dismissing the Complaint of Petitioner and whether or not the Honorable Public Respondent Committed a Grave Abuse of Discretion when it affirmed the said Decision.[11]

On May 31, 2005, the CA rendered the assailed Decision annulling and setting aside the decision of the NLRC, the decretal portion of which reads:

WHEREFORE, the petition is GRANTED. The assailed Resolution of the National Labor Relations Commission dismissing petitioner's complaint for illegal dismissal is ANNULLED and SET ASIDE. Private respondent Atok Big Wedge Company Incorporated is ORDERED to reinstate petitioner Jesus P. Gison to his former or equivalent position without loss of seniority rights and to pay him full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time these were withheld from him up to the time of his actual and effective reinstatement. This case is ordered REMANDED to the Labor Arbiter for the proper computation of backwages, allowances and other benefits due to petitioner. Costs against private respondent Atok Big Wedge Company Incorporated.

SO ORDERED.[12]

In ruling in favor of the respondent, the CA opined, among other things, that both the Labor Arbiter and the NLRC may have overlooked Article 280 of the Labor Code,[13] or the provision which distinguishes between two kinds of employees, i.e., regular and casual employees. Applying the provision to the respondent's case, he is deemed a regular employee of the petitioner after the lapse of one year from his employment. Considering also that respondent had been performing services for the petitioner for eleven years, respondent is entitled to the rights and privileges of a regular employee.

The CA added that although there was an agreement between the parties that respondent's employment would only be temporary, it clearly appears that petitioner disregarded the same by repeatedly giving petitioner several tasks to perform. Moreover, although respondent may have waived his right to attain a regular status of employment when he agreed to perform these tasks on a temporary employment status, still, it was the law that recognized and considered him a regular employee after his first year of rendering service to petitioner. As such, the waiver was ineffective.

Hence, the petition assigning the following errors:

I. WHETHER OR NOT THE COURT OF APPEALS DECIDED QUESTIONS OF SUBSTANCE CONTRARY TO LAW AND APPLICABLE RULINGS OF THIS HONORABLE COURT WHEN IT GAVE DUE COURSE TO THE PETITION FOR CERTIORARI DESPITE THE FACT THAT THERE WAS NO SHOWING THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION.

II. WHETHER OR NOT THE COURT OF APPEALS DECIDED QUESTIONS OF SUBSTANCE CONTRARY TO THE LAW AND APPLICABLE RULINGS OF THIS HONORABLE COURT WHEN IT BASED ITS FINDING THAT RESPONDENT IS ENTITLED TO REGULAR EMPLOYMENT ON A PROVISION OF LAW THAT THIS HONORABLE COURT HAS DECLARED TO BE INAPPLICABLE IN

CASE THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP IS IN DISPUTE OR IS THE FACT IN ISSUE.

III. WHETHER OR NOT THE COURT OF APPEALS DECIDED QUESTIONS OF SUBSTANCE CONTRARY TO LAW AND APPLICABLE RULINGS OF THIS HONORABLE COURT WHEN IT ERRONEOUSLY FOUND THAT RESPONDENT IS A REGULAR EMPLOYEE OF THE COMPANY.

IV. WHETHER OR NOT THE COURT OF APPEALS DECIDED QUESTIONS OF SUBSTANCE CONTRARY TO LAW AND APPLICABLE RULINGS OF THIS HONORABLE COURT WHEN IT ERRONEOUSLY DIRECTED RESPONDENT'S REINSTATEMENT DESPITE THE FACT THAT THE NATURE OF THE SERVICES HE PROVIDED TO THE COMPANY WAS SENSITIVE AND CONFIDENTIAL.[14]

Petitioner argues that since the petition filed by the respondent before the CA was a petition for certiorari under Rule 65 of the Rules of Court, the CA should have limited the issue on whether or not there was grave abuse of discretion on the part of the NLRC in rendering the resolution affirming the decision of the Labor Arbiter.

Petitioner also posits that the CA erred in applying Article 280 of the Labor Code in determining whether there was an employer-employee relationship between the petitioner and the respondent. Petitioner contends that where the existence of an employer-employee relationship is in dispute, Article 280 of the Labor Code is inapplicable. The said article only set the distinction between a casual employee from a regular employee for purposes of determining the rights of an employee to be entitled to certain benefits.

Petitioner insists that respondent is not a regular employee and not entitled to reinstatement.

On his part, respondent maintains that he is an employee of the petitioner and that the CA did not err in ruling in his favor.

The petition is meritorious.

At the outset, respondent's recourse to the CA was the proper remedy to question the resolution of the NLRC. It bears stressing that there is no appeal from the decision or resolution of the NLRC. As this Court enunciated in the case of *St. Martin Funeral Home v. NLRC*,^[15] the special civil action of certiorari under Rule 65 of the Rules of Civil Procedure, which is filed before the CA, is the proper vehicle for judicial review of decisions of the NLRC. The petition should be initially filed before the Court of Appeals in strict observance of the doctrine on hierarchy of courts as the appropriate forum for the relief desired.^[16] This Court not being a trier of facts, the resolution of unclear or ambiguous factual findings should be left to the CA as it is procedurally equipped for that purpose. From the decision of the Court of Appeals, an ordinary appeal under Rule 45 of the Rules of Civil Procedure before the Supreme Court may be resorted to by the parties. Hence, respondent's resort to the CA was appropriate under the circumstances.

Anent the primordial issue of whether or not an employer-employee relationship exists between petitioner and respondent.

Well-entrenched is the doctrine that the existence of an employer-employee relationship is ultimately a question of fact and that the findings thereon by the Labor Arbiter and the NLRC shall be accorded not only respect but even finality when supported by substantial evidence.^[17] Being a question of fact, the determination whether such a relationship exists between petitioner and respondent was well within the province of the Labor Arbiter and the NLRC. Being supported by substantial evidence, such determination should have been accorded great weight by the CA in resolving the issue.

To ascertain the existence of an employer-employee relationship jurisprudence has invariably adhered to the

four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." [18] Of these four, the last one is the most important. [19] The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end. [20]

Applying the aforementioned test, an employer-employee relationship is apparently absent in the case at bar. Among other things, respondent was not required to report everyday during regular office hours of petitioner. Respondent's monthly retainer fees were paid to him either at his residence or a local restaurant. More importantly, petitioner did not prescribe the manner in which respondent would accomplish any of the tasks in which his expertise as a liaison officer was needed; respondent was left alone and given the freedom to accomplish the tasks using his own means and method. Respondent was assigned tasks to perform, but petitioner did not control the manner and methods by which respondent performed these tasks. Verily, the absence of the element of control on the part of the petitioner engenders a conclusion that he is not an employee of the petitioner.

Moreover, the absence of the parties' retainership agreement notwithstanding, respondent clearly admitted that petitioner hired him in a limited capacity only and that there will be no employer-employee relationship between them. As averred in respondent's Position Paper: [21]

- For the participation of complainant regarding this particular problem of Atok, Mr. Torres offered him a pay in the amount of Php3,000.00 per month plus representation expenses. It was also agreed by Mr. Torres and the complainant that his participation on this particular problem of Atok will be temporary since the problem was then contemplated to be limited in nature, hence, there will be no employer-employee relationship between him and Atok. Complainant agreed on this arrangement. It was also agreed that complainant's compensations, allowances, representation expenses and reimbursement of company-related expenses will be processed and paid through disbursement vouchers; [22]

Respondent was well aware of the agreement that he was hired merely as a liaison or consultant of the petitioner and he agreed to perform tasks for the petitioner on a temporary employment status only. However, respondent anchors his claim that he became a regular employee of the petitioner based on his contention that the "temporary" aspect of his job and its "limited" nature could not have lasted for eleven years unless some time during that period, he became a regular employee of the petitioner by continually performing services for the company.

Contrary to the conclusion of the CA, respondent is not an employee, much more a regular employee of petitioner. The appellate court's premise that regular employees are those who perform activities which are desirable and necessary for the business of the employer is not determinative in this case. In fact, any agreement may provide that one party shall render services for and in behalf of another, no matter how necessary for the latter's business, even without being hired as an employee. [23] Hence, respondent's length of service and petitioner's repeated act of assigning respondent some tasks to be performed did not result to respondent's entitlement to the rights and privileges of a regular employee.

Furthermore, despite the fact that petitioner made use of the services of respondent for eleven years, he still cannot be considered as a regular employee of petitioner. Article 280 of the Labor Code, in which the lower court used to buttress its findings that respondent became a regular employee of the petitioner, is not applicable in the case at bar. Indeed, the Court has ruled that said provision is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, i.e., regular employees and casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a

union, or to security of tenure; it does not apply where the existence of an employment relationship is in dispute.[24] It is, therefore, erroneous on the part of the Court of Appeals to rely on Article 280 in determining whether an employer-employee relationship exists between respondent and the petitioner

Considering that there is no employer-employee relationship between the parties, the termination of respondent's services by the petitioner after due notice did not constitute illegal dismissal warranting his reinstatement and the payment of full backwages, allowances and other benefits.

WHEREFORE, premises considered, the petition is GRANTED. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 87846, are REVERSED and SET ASIDE. The Resolutions dated July 30, 2004 and September 30, 2004 of the National Labor Relations Commission are REINSTATED.

SO ORDERED.

Carpio,[*] Velasco, Jr., (Chairperson), Brion,**] and Sereno,***] JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1059 dated August 1, 2011.

**] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1056 dated July 27, 2011.

***] Designated as an additional member, per Special Order No. 1056 dated July 27, 2011.

[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Salvador J. Valdez, Jr. and Mariano C. del Castillo (now a member of this Court), concurring; rollo, pp. 195-204.

[2] Id. at 215-216.

[3] Rollo, pp. 37-43.

[4] CA rollo, p. 19.

[5] Id. at 72.

[6] Rollo, pp. 46-47.

[7] CA rollo, pp. 101-102.

[8] Id. at 101-106.

[9] Id. at 149-157.

[10] Rollo, pp. 162-163.

[11] Id. at 169.

[12] Id. at 203.

[13] ART. 280. Regular and casual employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the

employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

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

[14] Rollo, p. 292.

[15] 356 Phil. 811 (1998).

[16] *Id.* at 824.

[17] *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, G.R. No. 159890, May 28, 2004, 430 SCRA 368, 378.

[18] *Philippine Global Communication, Inc. v. De Vera*, G.R. No. 157214, June 7, 2005, 459 SCRA 260, 268.

[19] *Ushio Marketing v. NLRC*, G.R. No. 124551, 28 August 1998, 294 SCRA 673; *Insular Life Assurance Co., Ltd. v. NLRC*, G.R. No. 119930, March 12, 1998, 287 SCRA 476.

[20] *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, *supra* note 17, at 379.

[21] Rollo, pp. 48-70. (*Italics supplied.*)

[22] *Id.* at 50.

[23] *Philippine Global Communications, Inc. v. De Vera*, *supra* note 18, at 274.

[24] *Purefoods Corporation (now San Miguel Purefoods Company, Inc.) v. National Labor Relations Commission*, G.R. No. 172241, November 20, 2008, 571 SCRA 406, 412; *Philippine Global Communications, Inc. v. De Vera*, *supra* note 18, at 274.

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