

ANGELINA FRANCISCO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, KASEI CORPORATION, SEIICHIRO TAKAHASHI, TIMOTEO ACEDO, DELFIN LIZA, IRENE BALLESTEROS, TRINIDAD LIZA AND...

G.R. NO. 170087. August 31, 2006

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YNARES-SANTIAGO, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to annul and set aside the Decision and Resolution of the Court of Appeals dated October 29, 2004[1] and October 7, 2005,[2] respectively, in CA-G.R. SP No. 78515 dismissing the complaint for constructive dismissal filed by herein petitioner Angelina Francisco. The appellate court reversed and set aside the Decision of the National Labor Relations Commission (NLRC) dated April 15, 2003,[3] in NLRC NCR CA No. 032766-02 which affirmed with modification the decision of the Labor Arbiter dated July 31, 2002,[4] in NLRC-NCR Case No. 30-10-0-489-01, finding that private respondents were liable for constructive dismissal.

In 1995, petitioner was hired by Kasei Corporation during its incorporation stage. She was designated as Accountant and Corporate Secretary and was assigned to handle all the accounting needs of the company. She was also designated as Liaison Officer to the City of Makati to secure business permits, construction permits and other licenses for the initial operation of the company.[5]

Although she was designated as Corporate Secretary, she was not entrusted with the corporate documents; neither did she attend any board meeting nor required to do so. She never prepared any legal document and never represented the company as its Corporate Secretary. However, on some occasions, she was prevailed upon to sign documentation for the company.[6]

In 1996, petitioner was designated Acting Manager. The corporation also hired Gerry Nino as accountant in lieu of petitioner. As Acting Manager, petitioner was assigned to handle recruitment of all employees and perform management administration functions; represent the company in all dealings with government agencies, especially with the Bureau of Internal Revenue (BIR), Social Security System (SSS) and in the city government of Makati; and to administer all other matters pertaining to the operation of Kasei Restaurant which is owned and operated by Kasei Corporation.[7]

For five years, petitioner performed the duties of Acting Manager. As of December 31, 2000 her salary was P27,500.00 plus P3,000.00 housing allowance and a 10% share in the profit of Kasei Corporation.[8]

In January 2001, petitioner was replaced by Liza R. Fuentes as Manager. Petitioner alleged that she was required to sign a prepared resolution for her replacement but she was assured that she would still be connected with Kasei Corporation. Timoteo Acedo, the designated Treasurer, convened a meeting of all employees of Kasei Corporation and announced that nothing had changed and that petitioner was still connected with Kasei Corporation as Technical Assistant to Seiji Kamura and in charge of all BIR matters.[9]

Thereafter, Kasei Corporation reduced her salary by P2,500.00 a month beginning January up to September 2001 for a total reduction of P22,500.00 as of September 2001. Petitioner was not paid her mid-year bonus allegedly because the company was not earning well. On October 2001, petitioner did not receive her salary from the company. She made repeated follow-ups with the company cashier but she was advised that the company was not earning well.[10]

On October 15, 2001, petitioner asked for her salary from Acedo and the rest of the officers but she was informed that she is no longer connected with the company.[11]

Since she was no longer paid her salary, petitioner did not report for work and filed an action for constructive dismissal before the labor arbiter.

Private respondents averred that petitioner is not an employee of Kasei Corporation. They alleged that petitioner was hired in 1995 as one of its technical consultants on accounting matters and act concurrently as Corporate Secretary. As technical consultant, petitioner performed her work at her own discretion without control and supervision of Kasei Corporation. Petitioner had no daily time record and she came to the office any time she wanted. The company never interfered with her work except that from time to time, the management would ask her opinion on matters relating to her profession. Petitioner did not go through the usual procedure of selection of employees, but her services were engaged through a Board Resolution designating her as technical consultant. The money received by petitioner from the corporation was her professional fee subject to the 10% expanded withholding tax on professionals, and that she was not one of those reported to the BIR or SSS as one of the company's employees.[12]

Petitioner's designation as technical consultant depended solely upon the will of management. As such, her consultancy may be terminated any time considering that her services were only temporary in nature and dependent on the needs of the corporation.

To prove that petitioner was not an employee of the corporation, private respondents submitted a list of employees for the years 1999 and 2000 duly received by the BIR showing that petitioner was not among the employees reported to the BIR, as well as a list of payees subject to expanded withholding tax which included petitioner. SSS records were also submitted showing that petitioner's latest employer was Seiji Corporation.[13]

The Labor Arbiter found that petitioner was illegally dismissed, thus:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- finding complainant an employee of respondent corporation;
- declaring complainant's dismissal as illegal;
- ordering respondents to reinstate complainant to her former position without loss of seniority rights and jointly and severally pay complainant her money claims in accordance with the following computation:

- a. Backwages 10/2001 – 07/2002
(27,500 x 10 mos.) 275,000.00
- b. Salary Differentials (01/2001 – 09/2001) 22,500.00
- c. Housing Allowance (01/2001 – 07/2002) 57,000.00
- d. Midyear Bonus 2001 27,500.00
- e. 13[th]Month Pay 27,500.00

f. 10% share in the profits of Kasei Corp. from 1996-2001 361,175.00

g. Moral and exemplary damages 100,000.00

h. 10% Attorney's fees
P957,742.50 7,076.50

If reinstatement is no longer feasible, respondents are ordered to pay complainant separation pay with additional backwages that would accrue up to actual payment of separation pay.

SO ORDERED.[14]

On April 15, 2003, the NLRC affirmed with modification the Decision of the Labor Arbiter, the dispositive portion of which reads:

PREMISES CONSIDERED, the Decision of July 31, 2002 is hereby MODIFIED as follows:

- 1) Respondents are directed to pay complainant separation pay computed at one month per year of service in addition to full backwages from October 2001 to July 31, 2002;
- 2) The awards representing moral and exemplary damages and 10% share in profit in the respective accounts of P100,000.00 and P361,175.00 are deleted;
- 3) The award of 10% attorney's fees shall be based on salary differential award only;
- 4) The awards representing salary differentials, housing allowance, mid year bonus and 13th month pay are AFFIRMED.

SO ORDERED.[15]

On appeal, the Court of Appeals reversed the NLRC decision, thus:

WHEREFORE, the instant petition is hereby GRANTED. The decision of the National Labor Relations Commissions dated April 15, 2003 is hereby REVERSED and SET ASIDE and a new one is hereby rendered dismissing the complaint filed by private respondent against Kasei Corporation, et al. for constructive dismissal.

SO ORDERED.[16]

The appellate court denied petitioner's motion for reconsideration, hence, the present recourse.

The core issues to be resolved in this case are (1) whether there was an employer-employee relationship between petitioner and private respondent Kasei Corporation; and if in the affirmative, (2) whether petitioner was illegally dismissed.

Considering the conflicting findings by the Labor Arbiter and the National Labor Relations Commission on one hand, and the Court of Appeals on the other, there is a need to reexamine the records to determine which of the propositions espoused by the contending parties is supported by substantial evidence.[17]

We held in *Sevilla v. Court of Appeals*[18] that in this jurisdiction, there has been no uniform test to determine the existence of an employer-employee relation. Generally, courts have relied on the so-called right of control test where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such end. In addition to the standard of right-of-control, the existing economic conditions prevailing between the parties, like the inclusion of the employee in the payrolls, can help in

determining the existence of an employer-employee relationship.

However, in certain cases the control test is not sufficient to give a complete picture of the relationship between the parties, owing to the complexity of such a relationship where several positions have been held by the worker. There are instances when, aside from the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished, economic realities of the employment relations help provide a comprehensive analysis of the true classification of the individual, whether as employee, independent contractor, corporate officer or some other capacity.

The better approach would therefore be to adopt a two-tiered test involving: (1) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and (2) the underlying economic realities of the activity or relationship.

This two-tiered test would provide us with a framework of analysis, which would take into consideration the totality of circumstances surrounding the true nature of the relationship between the parties. This is especially appropriate in this case where there is no written agreement or terms of reference to base the relationship on; and due to the complexity of the relationship based on the various positions and responsibilities given to the worker over the period of the latter's employment.

The control test initially found application in the case of *Viaña v. Al-Lagadan and Piga*,^[19] and lately in *Leonardo v. Court of Appeals*,^[20] where we held that there is an employer-employee relationship when the person for whom the services are performed reserves the right to control not only the end achieved but also the manner and means used to achieve that end.

In *Sevilla v. Court of Appeals*,^[21] we observed the need to consider the existing economic conditions prevailing between the parties, in addition to the standard of right-of-control like the inclusion of the employee in the payrolls, to give a clearer picture in determining the existence of an employer-employee relationship based on an analysis of the totality of economic circumstances of the worker.

Thus, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity,^[22] such as: (1) the extent to which the services performed are an integral part of the employer's business; (2) the extent of the worker's investment in equipment and facilities; (3) the nature and degree of control exercised by the employer; (4) the worker's opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.^[23]

The proper standard of economic dependence is whether the worker is dependent on the alleged employer for his continued employment in that line of business.^[24] In the United States, the touchstone of economic reality in analyzing possible employment relationships for purposes of the Federal Labor Standards Act is dependency.^[25] By analogy, the benchmark of economic reality in analyzing possible employment relationships for purposes of the Labor Code ought to be the economic dependence of the worker on his employer.

By applying the control test, there is no doubt that petitioner is an employee of Kasei Corporation because she was under the direct control and supervision of Seiji Kamura, the corporation's Technical Consultant. She reported for work regularly and served in various capacities as Accountant, Liaison Officer, Technical Consultant, Acting Manager and Corporate Secretary, with substantially the same job functions, that is, rendering accounting and tax services to the company and performing functions necessary and desirable for the proper operation of the corporation such as securing business permits and other licenses over an indefinite period of engagement.

Under the broader economic reality test, the petitioner can likewise be said to be an employee of respondent corporation because she had served the company for six years before her dismissal, receiving check vouchers indicating her salaries/wages, benefits, 13th month pay, bonuses and allowances, as well as deductions and Social Security contributions from August 1, 1999 to December 18, 2000.[26] When petitioner was designated General Manager, respondent corporation made a report to the SSS signed by Irene Ballesteros. Petitioner's membership in the SSS as manifested by a copy of the SSS specimen signature card which was signed by the President of Kasei Corporation and the inclusion of her name in the on-line inquiry system of the SSS evinces the existence of an employer-employee relationship between petitioner and respondent corporation.[27]

It is therefore apparent that petitioner is economically dependent on respondent corporation for her continued employment in the latter's line of business.

In *Domasig v. National Labor Relations Commission*,[28] we held that in a business establishment, an identification card is provided not only as a security measure but mainly to identify the holder thereof as a bona fide employee of the firm that issues it. Together with the cash vouchers covering petitioner's salaries for the months stated therein, these matters constitute substantial evidence adequate to support a conclusion that petitioner was an employee of private respondent.

We likewise ruled in *Flores v. Nuestro*[29] that a corporation who registers its workers with the SSS is proof that the latter were the former's employees. The coverage of Social Security Law is predicated on the existence of an employer-employee relationship.

Furthermore, the affidavit of Seiji Kamura dated December 5, 2001 has clearly established that petitioner never acted as Corporate Secretary and that her designation as such was only for convenience. The actual nature of petitioner's job was as Kamura's direct assistant with the duty of acting as Liaison Officer in representing the company to secure construction permits, license to operate and other requirements imposed by government agencies. Petitioner was never entrusted with corporate documents of the company, nor required to attend the meeting of the corporation. She was never privy to the preparation of any document for the corporation, although once in a while she was required to sign prepared documentation for the company.[30]

The second affidavit of Kamura dated March 7, 2002 which repudiated the December 5, 2001 affidavit has been allegedly withdrawn by Kamura himself from the records of the case.[31] Regardless of this fact, we are convinced that the allegations in the first affidavit are sufficient to establish that petitioner is an employee of Kasei Corporation.

Granting *arguendo*, that the second affidavit validly repudiated the first one, courts do not generally look with favor on any retraction or recanted testimony, for it could have been secured by considerations other than to tell the truth and would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses.[32] A recantation does not necessarily cancel an earlier declaration, but like any other testimony the same is subject to the test of credibility and should be received with caution.[33]

Based on the foregoing, there can be no other conclusion that petitioner is an employee of respondent Kasei Corporation. She was selected and engaged by the company for compensation, and is economically dependent upon respondent for her continued employment in that line of business. Her main job function involved accounting and tax services rendered to respondent corporation on a regular basis over an indefinite period of engagement. Respondent corporation hired and engaged petitioner for compensation, with the power to dismiss her for cause. More importantly, respondent corporation had the power to control petitioner with the means and methods by which the work is to be accomplished.

The corporation constructively dismissed petitioner when it reduced her salary by P2,500 a month from January to September 2001. This amounts to an illegal termination of employment, where the petitioner is entitled to full backwages. Since the position of petitioner as accountant is one of trust and confidence, and under the principle of strained relations, petitioner is further entitled to separation pay, in lieu of reinstatement.[34]

A diminution of pay is prejudicial to the employee and amounts to constructive dismissal. Constructive dismissal is an involuntary resignation resulting in cessation of work resorted to when continued employment becomes impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to an employee.[35] In *Globe Telecom, Inc. v. Florendo-Flores*,[36] we ruled that where an employee ceases to work due to a demotion of rank or a diminution of pay, an unreasonable situation arises which creates an adverse working environment rendering it impossible for such employee to continue working for her employer. Hence, her severance from the company was not of her own making and therefore amounted to an illegal termination of employment.

In affording full protection to labor, this Court must ensure equal work opportunities regardless of sex, race or creed. Even as we, in every case, attempt to carefully balance the fragile relationship between employees and employers, we are mindful of the fact that the policy of the law is to apply the Labor Code to a greater number of employees. This would enable employees to avail of the benefits accorded to them by law, in line with the constitutional mandate giving maximum aid and protection to labor, promoting their welfare and reaffirming it as a primary social economic force in furtherance of social justice and national development.

WHEREFORE, the petition is GRANTED. The Decision and Resolution of the Court of Appeals dated October 29, 2004 and October 7, 2005, respectively, in CA-G.R. SP No. 78515 are ANNULLED and SET ASIDE. The Decision of the National Labor Relations Commission dated April 15, 2003 in NLRC NCR CA No. 032766-02, is REINSTATED. The case is REMANDED to the Labor Arbiter for the recomputation of petitioner Angelina Francisco's full backwages from the time she was illegally terminated until the date of finality of this decision, and separation pay representing one-half month pay for every year of service, where a fraction of at least six months shall be considered as one whole year.

SO ORDERED.

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

[1] Rollo, pp. 9-22. Penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

[2] Id. at 24-25.

[3] Id. at 193-198. Penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioner Tito F. Genilo.

[4] Id. at 164-173. Penned by Labor Arbiter Eduardo J. Carpio.

[5] Id. at 89.

[6] Id. at 89-90.

[7] Id. at 90.

[8] Id.

[9] Id. at 91.

[10] Id.

[11] Id. at 91-92.

[12] Id. at 92-93.

[13] Id. at 94.

[14] Id. at 172-173.

[15] Id. at 197-198.

[16] Id. at 100.

[17] *Abante, Jr. v. Lamadrid Bearing & Parts Corporation*, G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379.

[18] G.R. Nos. L-41182-3, April 15, 1988, 160 SCRA 171, 179-180, citing *Visayan Stevedore Transportation Company v. Court of Industrial Relations*, 125 Phil. 817, 820 (1967).

[19] 99 Phil. 408 (1956).

[20] G.R. No. 152459, June 15, 2006.

[21] *Supra* note 18.

[22] *Rutherford Food Corporation v. McComb*, 331 U.S. 722, 727 (1947); 91 L.Ed. 1772, 1777 (1946).

[23] See *Brock v. Lauritzen*, 624 F.Supp. 966 (E.D. Wisc. 1985); *Real v. Driscoll Strawberry Associates, Inc.*, 603 F.2d 748 (9th Cir. 1979); *Goldberg v. Whitaker House Cooperative, Inc.*, 366 U.S. 28, 81 S.Ct. 933, 6 L.Ed.2d 100 (1961); *Bartels v. Birmingham*, 332 U.S. 126, 67 S.Ct. 1547, 91 L.Ed. 1947 (1947).

[24] *Halferty v. Pulse Drug Company*, 821 F.2d 261 (5th Cir. 1987).

[25] *Weisel v. Singapore Joint Venture, Inc.*, 602 F.2d. 1185 (5th Cir. 1979).

[26] *Rollo*, pp. 305-321.

[27] Id. at 264-265.

[28] 330 Phil. 518, 524 (1996).

[29] G.R. No. 66890, April 15, 1988, 160 SCRA 568, 571.

[30] *Rollo*, pp. 120-121.

[31] Id. at 57.

[32] *People v. Joya*, G.R. No. 79090, October 1, 1993, 227 SCRA 9, 26-27.

[33] *People v. Davatos*, G.R. No. 93322, February 4, 1994, 229 SCRA 647, 651.

[34] *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*, G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711-712.

[35] *Leonardo v. National Labor Relations Commission*, 389 Phil. 118, 126 (2000).

[36] 438 Phil. 756 (2002).

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