VICTOR METEORO, REY CAGA, JIMMY CORONEL, COSME TAMOR, FELIXES LATONERO, ENRIQUE SALAZAR, MAYLA LAQUI, ORLY BANUA, BERNARDO MADRID, ARIEL REYES, ALFREDO REYES, JAVIER TIMERESA, A...

G.R. No. 171275. July 13, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Assailed in this petition for review on certiorari are the Court of Appeals Decision[1] dated May 31, 2005 and Resolution[2] dated January 27, 2006 in CA-G.R. SP No. 76942.

The facts of the case are as follows:

Respondent is a domestic corporation engaged in the business of producing, providing, or procuring the production of set designs and set construction services for television exhibitions, concerts, theatrical performances, motion pictures and the like. It primarily caters to the production design requirements of ABS-CBN Broadcasting Corporation in Metro Manila and nationwide.[3] On the other hand, petitioners were hired by respondent on various dates as artists, carpenters and welders. They were tasked to design, create, assemble, set-up and dismantle props, and provide sound effects to respondent's various TV programs and movies.[4]

Sometime in February and March 1999, petitioners filed their respective complaints for non-payment of night shift differential pay, overtime pay, holiday pay, 13[th] month pay, premium pay for Sundays and/or rest days, service incentive leave pay, paternity leave pay, educational assistance, rice benefits, and illegal and/or unauthorized deductions from salaries against respondent, before the Department of Labor and Employment (DOLE), National Capital Region (NCR). Their complaints were consolidated and docketed as NCR00-9902-IS-011.[5]

After the inspection conducted at respondent's premises, the labor inspector noted that "the records were not made available at the time of the inspection;" that respondent claimed that petitioners were contractual employees and/or independent talent workers; and that petitioners were required to punch their cards.[6]

In its position paper, respondent argued that the DOLE-NCR had no jurisdiction over the complaint of the petitioners because of the absence of an employer-employee relationship. It added that petitioners were free-lance individuals, performing special services with skills and expertise inherently exclusive to them like actors, actresses, directors, producers, and script writers, such that they were treated as special types of workers.[7]

Petitioners, on the other hand, averred that they were employees of respondent, as the elements of an employer-employee relationship existed.

Meanwhile, on April 12, 1999, petitioners filed a complaint for illegal dismissal against petitioner, with prayer for

payment of overtime pay, premium pay for holiday and rest day, holiday pay, service incentive leave pay, 13[th] month pay and attorney's fees before the National Labor Relations Commission (NLRC). The case was docketed as NLRC-NCR Case No. 00-04-04459-9.[8]

On October 11, 1999, DOLE Regional Director Maximo Baguyot Lim issued an Order[9] directing respondent to pay petitioners the total amount of P2,694,709.00. The dispositive portion of the Order reads as follows:

> WHEREFORE, premises considered, this Office finds merit in the complaint. Accordingly, Respondent Creative Creatures, Inc. and/or Mr. Edmond Ty, is hereby ordered to pay thirty three (33) Complainants, within ten (10) days from receipt hereof, the total amount of TWO MILLION SIX HUNDRED NINETY FOUR THOUSAND SEVEN HUNDRED NINE PESOS (P2,694,709.00) representing unpaid 13[th] month pay, vacation and sick leave benefits, regular holiday pay, rest day and holiday premiums, overtime pay, educational allowance, and rice allowance presented as follows:
>
> x x x x
>
> Failure to pay Complainants within the given period will constrain this Office to issue a WRIT OF EXECUTION for the immediate enforcement of this order.
>
> SO ORDERED.[10]

The Regional Director sustained petitioners' claim on the existence of an employer-employee relationship using the determinants set forth by the Labor Code, specifically, the elements of control and supervision, power of dismissal, payment of wages, and the selection and engagement of employees. He added that since the petitioners had worked for more than one year doing the same routine work, they were regular employees with respect to the activity in which they were employed. Lastly, he upheld the DOLE-NCR's jurisdiction to hear and determine cases in violation of labor standards law.[11]

On appeal, then DOLE Secretary Patricia A. Sto. Tomas affirmed the findings of the DOLE Regional Director.[12] In upholding the jurisdiction of the DOLE-NCR, she explained that the Secretary of Labor or his duly authorized representative is allowed to use his visitorial and enforcement powers to give effect to labor legislation, regardless of the amount involved, pursuant to Article 128 of the Labor Code, as amended by Republic Act (R.A.) No. 7730.

For failure to obtain a favorable decision, respondent elevated the matter to the Court of Appeals in CA-G.R. SP No. 76942. On May 31, 2005, the appellate court rendered the assailed decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition is GRANTED. For lack of jurisdiction, the Orders dated October 18, 2002 and February 5, 2003, issued by respondent Secretary are hereby declared NULL and VOID. However, in view of the filing of a similar case before the NLRC, referral of the instant case to the NLRC for appropriate determination is no longer necessary.
>
> SO ORDERED.[13]

While recognizing the visitorial and enforcement powers of the Regional Director and his jurisdiction to entertain money claims, the appellate court noted that Article 128 of the Labor Code provides an instance when he (Regional Director) may be divested of jurisdiction. The CA pointed out that respondent had consistently disputed the existence of employer-employee relationship, thereby placing the case beyond the jurisdiction of the Regional Director.

Petitioners now come before this Court in this petition for review on certiorari raising the lone issue of:

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> Whether or not the Court of Appeals committed an error when it ruled that the instant case falls within the exception clause of Article 128 (b) of the Labor Code, as amended, and in annulling and setting aside the Orders of the Secretary of Labor which affirmed the Order of the Regional Director of DOLE-NCR awarding the claims of the petitioners for benefits under the Labor Standards laws, namely, 13[th] month benefit, overtime pay, night shift differentials, premium on rest days, vacation and sick leave and other benefits accorded to employees of the responden[t] in the exercise of its visitorial powers pursuant to Article 128 (b) of the Labor Code as amended.[14]

In fine, we are tasked to determine which body/tribunal has jurisdiction over petitioners' money claims --- the DOLE Secretary or his duly authorized representative, or the NLRC.

We sustain the appellate court's conclusion that the instant case falls within the exclusive jurisdiction of the NLRC.

The DOLE Secretary and her authorized representatives, such as the DOLE-NCR Regional Director, have jurisdiction to enforce compliance with labor standards laws under the broad visitorial and enforcement powers conferred by Article 128 of the Labor Code, and expanded by Republic Act (R.A.) No. 7730,[15] to wit:[16]

> Art. 128. Visitorial and Enforcement Power -
>
> (a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at anytime of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.
>
> (b) Notwithstanding the provisions of Article 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee relation still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution, to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.
>
> x x x x

As it is now worded, and as consistently held in a number of cases,[17] the visitorial and enforcement powers of the Secretary, exercised through his representatives, encompass compliance with all labor standards laws and other labor legislation, regardless of the amount of the claims filed by workers.

It is well to note that the Regional Director's visitorial and enforcement powers have undergone a series of amendments. Confusion was engendered with the promulgation of the decision in Servando's Inc. v. Secretary of Labor and Employment.[18] In that case, this Court held that to harmonize Articles 217 (a) (6),[19] 129,[20] and 128 of the Labor Code, the Secretary of Labor should be deemed as clothed with plenary visitorial powers to order the inspection of all establishments where labor is employed, and to look into all possible violations of labor laws and regulations; but the power to hear and decide employees' claims exceeding P5,000.00 for each employee should be left to the Labor Arbiter as the exclusive repository of the power to hear and decide such claims.

Jurisprudence, however, rendered the Servando ruling inapplicable. In Guico, Jr. v. Quisumbing,[21] Allied Investigation Bureau, Inc. v. Sec. of Labor,[22] and Cirineo Bowling Plaza, Inc. v. Sensing,[23] we had occasion to explain that while it is true that under Articles 129 and 217 of the Labor Code, the Labor Arbiter has

jurisdiction to hear and decide cases where the aggregate money claim of each employee exceeds P5,000.00, these provisions of law do not contemplate or cover the visitorial and enforcement powers of the Secretary of Labor or his duly authorized representatives. Thus, we upheld the jurisdiction of the Regional Director, notwithstanding the fact that the amount awarded exceeded P5,000.00 per employee.

In order to do away with the jurisdictional limitations imposed by the Servando ruling and to finally settle any lingering doubts on the extent of the visitorial and enforcement powers of the Secretary of Labor and Employment, R.A. 7730 was enacted, amending Article 128 (b) to its present formulation, so as to free it from the jurisdictional restrictions found in Articles 129 and 217.

This notwithstanding, the power of the Regional Director to hear and decide the monetary claims of employees is not absolute. The last sentence of Article 128 (b) of the Labor Code, otherwise known as the "exception clause," provides an instance when the Regional Director or his representatives may be divested of jurisdiction over a labor standards case.

Under prevailing jurisprudence, the so-called "exception clause" has the following elements, all of which must concur:

> (a) that the employer contests the findings of the labor regulations officer and raises issues thereon;
>
> (b) that in order to resolve such issues, there is a need to examine evidentiary matters; and
>
> (c) that such matters are not verifiable in the normal course of inspection.[24]

In the present case, the CA aptly applied the "exception clause." At the earliest opportunity, respondent registered its objection to the findings of the labor inspector. The labor inspector, in fact, noted in its report that "respondent alleged that petitioners were contractual workers and/or independent and talent workers without control or supervision and also supplied with tools and apparatus pertaining to their job."[25] In its position paper, respondent again insisted that petitioners were not its employees. It then questioned the Regional Director's jurisdiction to entertain the matter before it, primarily because of the absence of an employer-employee relationship. Finally, it raised the same arguments before the Secretary of Labor and the appellate court. It is, therefore, clear that respondent contested and continues to contest the findings and conclusions of the labor inspector.

To resolve the issue raised by respondent, that is, the existence of an employer-employee relationship, there is need to examine evidentiary matters. The following elements constitute the reliable yardstick to determine such relationship: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct.[26] There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status.[27] These pieces of evidence are readily available, as they are in the possession of either the employee or the employer; and they may easily be looked into by the labor inspector (in the course of inspection) when confronted with the question of the existence or absence of an employer-employee relationship.

Some businessmen, however, try to avoid an employer-employee relationship from arising in their enterprises, because that juridical relation spawns obligations connected with workmen's compensation, social security, medicare, termination pay, and unionism.[28] Thus, in addition to the above-mentioned documents, other pieces of evidence are considered in ascertaining the true nature of the parties' relationship. This is especially true in determining the element of "control." The most important index of an employer-employee relationship is the

so-called "control test," that is, whether the employer controls or has reserved the right to control the employee, not only as to the result of the work to be done, but also as to the means and methods by which the same is to be accomplished.[29]

In the case at bar, whether or not petitioners were independent contractors/project employees/free lance workers is a question of fact that necessitates the examination of evidentiary matters not verifiable in the normal course of inspection. Indeed, the contracts of independent services, as well as the check vouchers, were kept and maintained in or about the premises of the workplace and were, therefore, verifiable in the course of inspection. However, respondent likewise claimed that petitioners were not precluded from working outside the service contracts they had entered into with it (respondent); and that there were instances when petitioners abandoned their service contracts with the respondent, because they had to work on another project with a different company. Undoubtedly, the resolution of these issues requires the examination of evidentiary matters not verifiable in the normal course of inspection. Verily, the Regional Director and the Secretary of Labor are divested of jurisdiction to decide the case.

We would like to emphasize that "to contest" means to raise questions as to the amounts complained of or the absence of violation of labor standards laws; or, as in the instant case, issues as to the complainants' right to labor standards benefits. To be sure, raising lack of jurisdiction alone is not the "contest" contemplated by the exception clause.[30] It is necessary that the employer contest the findings of the labor regulations officer during the hearing or after receipt of the notice of inspection results.[31] More importantly, the key requirement for the Regional Director and the DOLE Secretary to be divested of jurisdiction is that the evidentiary matters be not verifiable in the course of inspection. Where the evidence presented was verifiable in the normal course of inspection, even if presented belatedly by the employer, the Regional Director, and later the DOLE Secretary, may still examine it; and these officers are not divested of jurisdiction to decide the case.[32]

In sum, respondent contested the findings of the labor inspector during and after the inspection and raised issues the resolution of which necessitated the examination of evidentiary matters not verifiable in the normal course of inspection. Hence, the Regional Director was divested of jurisdiction and should have endorsed the case to the appropriate Arbitration Branch of the NLRC.[33] Considering, however, that an illegal dismissal case had been filed by petitioners wherein the existence or absence of an employer-employee relationship was also raised, the CA correctly ruled that such endorsement was no longer necessary.

WHEREFORE, premises considered, the petition is DENIED for lack of merit. The Court of Appeals Decision dated May 31, 2005 and its Resolution dated January 27, 2006 in CA-G.R. SP No. 76942, are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

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[1] Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr., concurring; rollo, pp. 322-333.

[2] Id. at 353.

[3] Id. at 323.

[4] Id. at 324.

[5] Id.

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[6] Id. at 56.

[7] Id. at 169.

[8] Id. at 324-325.

[9] Id. at 169-176.

[10] Id. at 174-176.

[11] Id. at 171-173.

[12] Embodied in an Order dated October 18, 2002; id. at 55-58.

[13] Id. at 332-333.

[14] Id. at 484-485.

[15] Entitled "AN ACT FURTHER STRENGTHENING THE VISITORIAL AND ENFORCEMENT POWERS OF THE SECRETARY OF LABOR AND EMPLOYMENT, AMENDING FOR THE PURPOSE ARTICLE 128 (b) OF PRESIDENTIAL DECREE NUMBERED FOUR HUNDRED FORTY-TWO AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES"

[16] Bayhaven, Inc., et. al. v. Abuan, et.al., G.R. No. 160859, July 30, 2008.

[17] Cirineo Bowling Plaza, Inc. v. Sensing, G.R. No. 146572, January 14, 2005, 448 SCRA 175; V.L. Enterprises v. Court of Appeals, G.R. No. 167512, March 12, 2007, 518 SCRA 174; Ex-Bataan Veterans Security Agency, Inc. v. Laguesma, G.R. No. 152396, November 20, 2007, 537 SCRA 651; Allied Investigation Bureau, Inc. v. Sec. of Labor, 377 Phil. 80 (1999); Guico, Jr. v. Quisumbing, G.R. No. 131750, November 16, 1998, 298 SCRA 666 cited in Bayhaven, Inc., et. al. v. Abuan, et.al., Id.

[18] G.R. No. 85840, June 5, 1991, 198 SCRA 156.

[19] Art. 217. Jurisdiction of Labor Arbiters and the Commission. - (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

x x x x

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement. .

[20] Art. 129. Recovery of wages, simple money claims and other benefits. - Upon complaint of any interested party, the regional director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or household helper under this Code, arising from employer-employee relations: Provided, That such complaint does not include a claim for reinstatement; Provided further, that the aggregate money claims of each employee or household helper does not exceed five thousand pesos (P5,000.00). x x x x

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[21] Supra.

[22] Supra.

[23] Supra.

[24] Bayhaven, Inc., et. al. v. Abuan, et.al., supra. note 16; Ex-Bataan Veterans Security Agency, Inc. v. Laguesma, supra note 17, at 663; Batong Buhay Gold Mines, Inc. v. Sec. Dela Serna, 370 Phil. 872, 887 (1999); SSK Parts Corporation v. Camas, G.R. No. 85934, January 30, 1990, 181 SCRA 675, 678 (1990).

[25] Rollo, pp. 330-331.

[26] Tongko v. The Manufacturers Life Insurance Co. (Phils.) Inc., et. al, G.R. No. 167622, November 7, 2008 citing Pacific Consultants International Asia, Inc. v. Schonfeld, G.R. No. 166920, February 19, 2007, 516 SCRA 209.

[27] I Azucena, The Labor Code, with Comments and Cases 125-126 (1999).

[28] Id. at 123.

[29] Tongko v. The Manufacturers Life Insurance Co. (Phils.) Inc., et. al, supra.

[30] Batong Buhay Gold Mines, Inc. v. Sec. Dela Serna, supra. note 24 at 888.

[31] Ex-Bataan Veterans Seurity Agency, Inc. v. Laguesma, supra. note 24.

[32] Bayhaven, Inc., et. al. v. Abuan, et.al., supra. note 24.

[33] Section 1, Rule III of the Rules on the Disposition of Labor Standards Cases in the Regional Offices.

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