

**JETHRO INTELLIGENCE & SECURITY CORPORATION AND
YAKULT PHILS., INC. PETITIONERS, VS. THE HON. SECRETARY OF
LABOR AND EMPLOYMENT, FREDERICK GARCIA, GIL CORDERO,
LEONIELYN UDALBE, ...**

G.R. No. 172537. August 14, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Jethro Intelligence and Security Corporation (Jethro) is a security service contractor with a security service contract agreement with co-petitioner Yakult Phils., Inc. (Yakult). On the basis of a complaint[1] filed by respondent Frederick Garcia (Garcia), one of the security guards deployed by Jethro, for underpayment of wages, legal/special holiday pay, premium pay for rest day, 13[th] month pay, and night shift differential, the Department of Labor and Employment (DOLE)-Regional Office No. IV conducted an inspection at Yakult's premises in Calamba, Laguna in the course of which several labor standards violations were noted, including keeping of payrolls and daily time records in the main office, underpayment of wages, overtime pay and other benefits, and non-registration with the DOLE as required under Department Order No. 18-02[2].

Hearings on Garcia's complaint and on the subsequent complaints of his co-respondents Gil Cordero et al. were conducted during which Jethro submitted copies of payrolls covering June 16 to 30, 2003, February to May 16-31, 2004, June 16-30, 2003, and February 1-15, 2004. Jethro failed to submit daily time records of the claimants from 2002 to June 2004, however, despite the order for it to do so.

By Order[3] of September 9, 2004, the DOLE Regional Director, noting petitioners' failure to rectify the violations noted during the above-stated inspection within the period given for the purpose, found them jointly and severally liable to herein respondents for the aggregate amount of EIGHT HUNDRED NINE THOUSAND TWO HUNDRED TEN AND 16/100 PESOS (P809,210.16) representing their wage differentials, regular holiday pay, special day premium pay, 13[th] month pay, overtime pay, service incentive leave pay, night shift differential premium and rest day premium. Petitioners were also ordered to submit proof of payment to the claimants within ten calendar days, failing which the entire award would be doubled, pursuant to Republic Act No. 8188, and the corresponding writs of execution and garnishment would be issued.

Jethro appealed[4] to the Secretary of Labor and Employment (SOLE), faulting the Regional Director for, among other things, basing the computation of the judgment award on Garcia's affidavit instead of on the data reflected in the payrolls for 2001 to 2004.[5]

By Decision[6] dated May 27, 2005, then SOLE Patricia A. Sto. Tomas partially granted petitioner Jethro's appeal by affirming with modification the Regional Director's Order dated September 9, 2004 by deleting the penalty of double indemnity and setting aside the writs of execution and garnishment, without prejudice to the subsequent issuance by the Regional Director of the writs necessary to implement the said Decision.

Petitioners' Motion for Reconsideration[7] of the SOLE Decision having been denied,[8] they filed a petition for certiorari before the Court of Appeals, insisting that the affidavit of Garcia should not have been given evidentiary weight in computing the judgment award.

By Decision[9] of January 24, 2006, the appellate court denied the petition, it holding that contrary to petitioners' contention, Garcia's affidavit has probative weight for under Art. 221 of the Labor Code, the rules of evidence are not controlling, and pursuant to Rule V of the National Labor Relations Commission (NLRC) Rules of Procedure, labor tribunals may accept affidavits in lieu of direct testimony. Petitioners' motion for reconsideration having been denied by Resolution[10] dated April 28, 2006, they filed the present petition for review on certiorari.

Petitioners attribute grave abuse of discretion on the part of the DOLE Regional Director and the SOLE in this wise: (1) the SOLE has no jurisdiction over the case because, following Article 129 of the Labor Code, the aggregate money claim of each employee exceeded P5,000.00; (2) petitioner Jethro, as the admitted employer of respondents, could not be expected to keep payrolls and daily time records in Yakult's premises as its office is in Quezon City, hence, the inspection conducted in Yakult's plant had no basis; and (3) having filed the required bond equivalent to the judgment award, and as the Regional Director's Order of September 9, 2004 was not served on their counsel of record, the writs of execution and garnishment subsequently issued were not in order.

And petitioners maintain that Garcia's affidavit should not have been given weight, they not having been afforded the opportunity to cross-examine him.

The petition is bereft of merit.

The sole office of a writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction. It does not include the correction of a tribunal's evaluation of the evidence and factual findings thereon, especially since factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case.[11]

In dismissing petitioners' petition for certiorari and thus affirming the SOLE Decision, the appellate court did not err. The scope of the visitatorial powers of the SOLE and his/her duly authorized representatives was clarified in *Allied Investigation Bureau, Inc. v. Secretary of Labor and Employment*,[12] viz:

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 claims of each employee exceeds P5,000.00, said provisions do not contemplate nor cover the visitatorial and enforcement powers of the Secretary of Labor or his duly authorized representatives.

Rather, said powers are defined and set forth in Article 128 of the Labor Code (as amended by R.A. No. 7730) thus:

Art. 128. Visitatorial and enforcement power.--

x x x x

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee 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 finding of the labor employment and enforcement officer and

raises issues supported by documentary proofs which were not considered in the course of inspection.
[Emphasis, underscoring and italics supplied]

x x x x

The aforementioned [Art. 128] explicitly excludes from its coverage Articles 129 and 217 of the Labor Code by the phrase "(N)otwithstanding the provisions of Articles 129 and 217 of this Code to the contrary xxx" thereby retaining and further strengthening the power of the Secretary of Labor or his duly authorized representative to issue compliance orders to give effect to the labor standards provisions of said 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.[13] (Emphasis and underscoring supplied.)

In *Ex-Bataan Veterans Security Agency, Inc. v. Laguesma* case, the Court went on to hold that

x x x if the labor standards case is covered by the exception clause in Article 128(b) of the Labor Code, then the Regional Director will have to endorse the case to the appropriate Arbitration Branch of the NLRC. In order to divest the Regional Director or his representatives of jurisdiction, the following elements must be present: (a) that the employer contests the findings of the labor regulations officer and raises issues therein; (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. The rules also provide that the employer shall raise such objections during the hearing of the case or at any time after receipt of the notice of inspection results.[14]

In the case at bar, the Secretary of Labor correctly assumed jurisdiction over the case as it does not come under the exception clause in Art. 128(b) of the Labor Code. While petitioner Jethro appealed the inspection results and there is a need to examine evidentiary matters to resolve the issues raised, the payrolls presented by it were considered in the ordinary course of inspection. While the employment records of the employees could not be expected to be found in Yakult's premises in Calamba, as Jethro's offices are in Quezon City, the records show that Jethro was given ample opportunity to present its payrolls and other pertinent documents during the hearings and to rectify the violations noted during the ocular inspection. It, however, failed to do so, more particularly to submit competent proof that it was giving its security guards the wages and benefits mandated by law.

Jethro's failure to keep payrolls and daily time records in Yakult's premises was not the only labor standard violation found to have been committed by it; it likewise failed to register as a service contractor with the DOLE, pursuant to Department Order No. 18-02 and, as earlier stated, to pay the wages and benefits in accordance with the rates prescribed by law.

Respecting petitioners' objection to the weight given to Garcia's affidavit, it bears noting that said affidavit was not the only basis in arriving at the judgment award. The payrolls for June 16-30, 2003 and February 1-15, 2004 reveal that the overtime rates were below the required rate.[15] That Garcia was not cross-examined on his affidavit is of no moment. For, as *Mayon Hotel and Restaurant vs. Adana*[16] instructs:

Article 221 of the Labor Code is clear: technical rules are not binding, and the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice. The rule of evidence prevailing in court of law or equity shall not be controlling in labor cases and it is the spirit and intention of the Labor Code that the Labor Arbiter shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. Labor laws mandate the speedy administration of justice, with least attention to technicalities but without sacrificing the fundamental requisites of due process.[17] (Emphasis and underscoring supplied)

It bears noting that while Jethro claims that it did not cross-examine Garcia, the minutes of the July 5, 2004 hearing - at which Jethro's counsel was present - indicate that Garcia's affidavit was presented.[18] Jethro had thus

the opportunity to controvert the contents of the affidavit, but it failed.

Respecting the fact that Jethro's first counsel of record, Atty. Benjamin Rabuco III, was not furnished a copy of the September 9, 2004 Order of the Director, the SOLE noted in her assailed Decision that since Atty. Thaddeus Venturanza formally entered his appearance as Jethro's new counsel on appeal - and an appeal was indeed filed and duly verified by Jethro's owner/manager, for all practical purposes, the failure to furnish Atty. Rabuco a copy of the said Order had been rendered moot. For, on account of such lapse, the SOLE deleted the double indemnity award and held that the writs issued in implementation of the September 9, 2004 Order were null and void, "without prejudice to the subsequent issuance by the Regional Director of the writs necessary to implement" the SOLE Decision.

Thus, the DOLE-Regional Office subsequently issued the following Orders: Order[19] of July 31, 2006 holding in abeyance the release of the amount equivalent to the judgment award out of Yakult accounts pending the receipt of the supersedeas bond; and Order[20] of February 27, 2007 ordering the immediate release of the garnished amount.

It bears emphasis that the SOLE, under Article 106 of the Labor Code, as amended, exercises quasi-judicial power, at least to the extent necessary to determine violations of labor standards provisions of the Code and other labor legislation. He/she or the Regional Directors can issue compliance orders and writs of execution for the enforcement thereof. The significance of and binding effect of the compliance orders of the DOLE Secretary is enunciated in Article 128 of the Labor Code, as amended, viz:

ART. 128. Visitorial and enforcement power. -

x x x x

(d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or his duly authorized representatives issued pursuant to the authority granted under this article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this article.

And Sec. 5, Rule V (Execution) of the Rules on Disposition of Labor Standards Cases in Regional Offices provides that the filing of a petition for certiorari shall not stay the execution of the appealed order or decision, unless the aggrieved party secures a temporary restraining order (TRO) from the Court. In the case at bar, no TRO or injunction was issued, hence, the issuance of the questioned writs of execution and garnishment by the DOLE-Regional Director was in order.

WHEREFORE, the petition is DENIED and the Court of Appeals' Decision dated January 24, 2006 and Resolution dated April 28, 2006 are AFFIRMED.

SO ORDERED.

Carpio, [*] Brion, Del Castillo, and Abad, JJ., concur.

[*] Additional member per Special Order No. 671 in lieu of Senior Associate Justice Leonardo A. Quisumbing who is on official leave.

[1] Records, p. 3.

[2] Id. at 67.

[3] Id. at 64-67.

[4] Id. at 119-124.

[5] Id. at 123.

[6] Id. at 188-191.

[7] Id. at 211-212.

[8] Id. at 217-219.

[9] Penned by Associate Justice Arturo G. Tayag (ret), with the concurrence of Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza. CA rollo, pp. 98-107.

[10] CA rollo, pp. 122-123

[11] Cuenca v. Atas, G.R. No. 146214, October 5, 2007, 535 SCRA 48, 84.

[12] 377 Phil. 80 (1999).

[13] Id. at 88-89.

[14] Ex-Bataan Veterans Security Agency, Inc. v. Laguesma, G.R. No. 152396, November 20, 2007, 537 SCRA 651, 663.

[15] Records, p. 30.

[16] G.R. No. 157634, May 16, 2005, 458 SCRA 609, 628.

[17] Id. at 628.

[18] Records, p. 26.

[19] Records, 465-466.

[20] Id. at 525-527. Penned by Atty. Ricardo S. Martinez, Sr., Regional Director.

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