GLORY PHILIPPINES, INC., PETITIONER, VS. BUENAVENTURA B. VERGARA AND ROSELYN T. TUMASIS, RESPONDENTS.

G.R. No. 176627. August 24, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition[1] for review on certiorari assails the September 18, 2006 Decision[2] of the Court of Appeals in CA-G.R. SP No. 73377 which set aside the December 20, 2001 Decision and July 22, 2002 Order of the National Labor Relations Commission in NLRC NCR CA No. 022914-00 and declared that respondents Buenaventura B. Vergara and Roselyn T. Tumasis were illegally dismissed; and the February 6, 2007 Resolution[3] denying the motion for reconsideration.

Petitioner Glory Philippines, Inc. manufactures money-counting machines. In June 1998, it created a Parts Inspection Section (PIS) tasked to inspect the machine parts for exportation to its exclusive buyer, Glory Limited Japan (Glory Japan).

Petitioner hired respondents on July 6, 1998, allegedly as members of the PIS. However, the employment contracts[4] which they signed only on August 18, 1998, indicated them as Production Operators in the Production Section with a daily wage of Php188.00. The contracts covered the period from July 31 to August 30, 1998.

Thereafter, respondents' employment contracts were extended on a monthly basis. For the periods from August 31 to October 20, 1998, and October 21 to November 30, 1998, respondents signed their respective employment contracts designating them as members of the PIS. From December 1, 1998 to April 27, 1999, respondents performed the same duties and responsibilities despite the absence of employment contracts. On April 27, 1999, however, they were each made to sign employment contracts[5] covering the period from February 28 to April 30, 1999.

On April 26, 1999,[6] petitioner's President, Mr. Takeo Oshima, informed the Assistant Manager that the contractual employees in the PIS would no longer be needed by the company as Glory Japan had cancelled its orders.

Nevertheless, despite the alleged lack of need for respondents' services, petitioner claimed that it reluctantly agreed to extend respondents' employment due to their insistent pleas. Thus, for the period from May 1 to May 15, 1999, respondents signed employment contracts with a higher wage of Php200.00 a day.

Respondents claimed that they continued to work until May 25, 1999 when, at the close of working hours, petitioner's security guard advised them that their employment had been terminated and that they would no longer be allowed to enter the premises. Consequently, on May 27, 1999, they filed separate complaints for illegal dismissal with the Department of Labor and Employment, Region IV. The cases were subsequently referred to the National Labor Relations Commission (NLRC) for resolution.

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On October 29, 1999, the Labor Arbiter rendered a decision[7] finding that respondents were regular employees because they performed activities desirable to the usual business or trade of petitioner for almost eleven (11) months; and that they were illegally dismissed for lack of just cause and non-observance of due process. Thus:

> Hence, in accordance with Art. 280, we believe as we ought to believe that complainants [herein respondents] were regular employees since their engagement was not fixed for a specific project or undertaking for a particular season. As regular employees, complainants had all the rights to security of tenure.
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> x x x x
>
> After a careful perusal of the record of this case, we could not find any glimpse of just cause and the observance of due process before and during the termination of complainants' services. In this case, only general allegations were asserted by respondent such as "declining order from Glory Japan coupled with poor work performance of complainants" to justify the dismissal of the latter. This afterthought averment, in the absence of any substantial evidence to prove respondent's defense, should be considered as empty allegation and must miserably fail.
>
> Thus, we declare as we ought to declare that the dismissal of complainants Vergara and Tumasis were (sic) illegal in the absence of any just cause as enunciated in Art. 282 and the non-observance of due process in the termination of complainants' services.[8]

On appeal, the NLRC affirmed the findings of the Labor Arbiter. However, upon motion for reconsideration, the NLRC reversed and set aside its earlier decision[9] and dismissed the complaint for lack of merit. The NLRC ruled that respondents were project employees and that their employment was terminated upon expiration of their employment contracts. Respondents' motion for reconsideration was denied hence, they filed a petition for certiorari before the Court of Appeals. On September 18, 2006, the appellate court granted the petition, as follows:

> WHEREFORE, the PETITION FOR CERTIORARI IS GRANTED.
>
> The DECISION dated December 20, 2001 and the ORDER dated July 22, 2002 are SET ASIDE and the DECISION of Labor Arbiter Dominador B. Medroso, Jr. dated October 29, 1999 is REINSTATED subject to the following MODIFICATIONS:
>
> - Should the reinstatement of the petitioners [herein respondents] be no longer feasible because the section/division to which they used to be assigned no longer exists, separation pay equivalent to 1 month salary for every year of service from the time of dismissal until finality of this DECISION shall be paid;
>
> - Full backwages to be paid to the petitioners shall be from the time of dismissal until actual reinstatement or, in case separation pay is proper, until finality of this DECISION; and
>
> - Other monetary awards granted in the DECISION dated October 29, 1999 shall be paid reckoned from the start of their employment until their actual reinstatement or, in case separation pay is proper, until finality of this DECISION.
>
> The case is remanded to the Labor Arbiter for the prompt computation of the benefits in favor of the petitioners as hereby determined.
>
> The private respondent shall pay costs of suit.
>
> SO ORDERED.[10]

Petitioner's motion for reconsideration was denied hence, this petition raising the following issues:[11]

> A.

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> THE COURT OF APPEALS COMMITTED SERIOUS AND MANIFEST ERROR IN AFFIRMING THE LABOR ARBITER'S DECISION FINDING THAT RESPONDENTS ARE REGULAR EMPLOYEES OF THE PETITIONER
>
> B.
>
> THE COURT OF APPEALS COMMITTED SERIOUS AND MANIFEST ERROR IN AFFIRMING THE LABOR ARBITER'S DECISION FINDING THAT RESPONDENTS WERE ILLEGALLY DISMISSED
>
> C.
>
> THE COURT OF APPEALS COMMITTED SERIOUS AND MANIFEST ERROR IN AFFIRMING THE LABOR ARBITER'S DECISION FINDING THAT RESPONDENTS ARE ENTITLED TO BACKWAGES, SEPARATION PAY, 13[TH] MONTH PAY AND SERVICE INCENTIVE LEAVE PAY

Petitioner claims that respondents were contractual and/or project employees because their employment was dependent on the transaction with Glory Japan. Respondents, on the other hand, claim that they were regular employees and that they were dismissed without just or authorized cause and due process of law.

The issues for resolution are: 1) whether respondents were regular employees; and 2) whether respondents were illegally dismissed.

The petition lacks merit.

In Perpetual Help Credit Cooperative, Inc. v. Faburada,[12] we explained that there are three kinds of employees as provided under Article 280 of the Labor Code, thus:

> Article 280 of the Labor Code provides for three kinds of employees: (1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose 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; and (3) casual employees or those who are neither regular nor project employees x x x.[13]

There is no merit in petitioner's claim that respondents were project employees whose employment was coterminous with the transaction with Glory Japan.

In Grandspan Development Corporation v. Bernardo,[14] the Court held that the principal test for determining whether particular employees are properly characterized as "project employees," as distinguished from "regular employees," is whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration and scope of which were specified at the time the employees were engaged for that project. As defined, project employees are those workers hired (1) for a specific project or undertaking, and (2) the completion or termination of such project or undertaking has been determined at the time of engagement of the employee.[15]

In the instant case, respondents' employment contracts failed to state the specific project or undertaking for which they were allegedly engaged. While petitioner claims that respondents were hired for the transaction with Glory Japan, the same was not indicated in the contracts. As correctly observed by the Court of Appeals, nothing therein suggested or even hinted that their employment was dependent on the continuous patronage of Glory Japan.[16]

Further, the employment contracts did not indicate the duration and scope of the project or undertaking as required by law. It is not enough that an employee is hired for a specific project or phase of work to qualify as a

project employee. There must also be a determination of, or a clear agreement on, the completion or termination of the project at the time the employee was engaged,[17] which is absent in this case.

Respondents were given pro forma employment contracts which were repeatedly renewed upon petitioner's behest. Respondents were hired on July 6, 1998 but signed their initial employment contracts only on August 18, 1998. The contracts covered the period from July 31 to August 30, 1998 and respondents were designated therein as Production Operators. Thereafter, respondents were hired as members of the PIS and their employment contracts were extended several times, to wit: from August 31 to October 20, 1998; from October 21 to November 30, 1998; from February 28 to April 30, 1999; and, from May 1 to May 15, 1999.

It bears stressing that from December 1, 1998 to April 27, 1999, respondents reported for work despite the absence of employment contracts. On April 27, 1999, however, they were belatedly made to sign employment contracts for the period from February 28 to April 30, 1999. Although petitioner's transaction with Glory Japan was terminated sometime in April 1999, yet respondents were allowed to work without interruption until May 25, 1999. In fact, petitioner even paid them higher salaries of Php200.00 a day.

To our mind, the foregoing factual circumstances negate petitioner's claim that respondents were project employees. We quote with approval the ruling of the Court of Appeals, as follows:

> The manner by which the private respondent [herein petitioner] dealt with the petitioners [herein respondents] was obviously plagued with basic irregularities. Although they were supposedly hired as PSI staff and started working on July 6, 1998, they were still made to sign individual pro forma employment contracts only much later i.e., on August 18, 1999, with their employment position being stated therein as production operators in the Production Section being purportedly extended from July 31, 1998 to August 30, 1998. From then until October 20, 1998, they were made to sign employment contracts on more or less month-to-month terms for the position of PSI staff. Thereafter, they continued working for the private respondent from December 1, 1998 until April 27, 1999 even if they had [not] signed any written contract for such employment period. We are baffled why they were once again made to signify on April 27, 1999 their conformity to an employment contract for the period from February 28, 1999 to April 30, 1999 and later to another contract for the period from May 1, 1999 to May 15, 1999.
>
> To us, the private respondent's illegal intention became clearer from such acts. Its making the petitioners sign written employment contracts a few days before the purported end of their employment periods (as stated in such contracts) was a diaphanous ploy to set periods with a view for their possible severance from employment should the private respondent so willed it. If the term of the employment was truly determined at the beginning of the employment, why was there delay in the signing of the ready-made contracts that were entirely prepared by the employer? Also, the changes in the positions supposedly held by the petitioners in the company belied the private respondent's adamant contention that the petitioners were hired solely for the purpose of manning PIS during its alleged dry run period that ended on October 20, 1998. We view such situation as a very obvious ploy of the private respondent to evade the petitioner's eventual regularization.[18]

Likewise, we cannot give credence to petitioner's claim that respondents were fixed term employees. Petitioner's reliance on our ruling in Philippine Village Hotel v. National Labor Relations Commission[19] is misplaced because the facts in the said case are not in all fours with the case at bar. In said case, the employees were hired only for a one-month period and their employment contracts were never renewed. In the instant case, respondents' original employment contracts were renewed four times. In the last instance, their contracts were extended despite the cessation of petitioner's alleged transaction with Glory Japan. Thus, respondents were continuously under the employ of petitioner, performing the same duties and responsibilities, from July 6, 1998 to May 25, 1999.

In Philips Semiconductors (Phils.), Inc. v. Fadriquela,[20] we held that such a continuing need for respondents' services is sufficient evidence of the necessity and indispensability of their services to petitioner's business.[21]

Consequently, we find that respondents were regular employees defined under Article 280 of the Labor Code as those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of petitioner.

Respondents are entitled to security of tenure notwithstanding the contrary provisions of their employment contracts. Under the Labor Code, the requirements for the lawful dismissal of an employee are two-fold, the substantive and the procedural aspects. Not only must the dismissal be for a valid or authorized cause, the rudimentary requirements of due process - notice and hearing - must, likewise, be observed before an employee may be dismissed. Without the concurrence of the two, the termination would, in the eyes of the law, be illegal.[22]

As an employer, petitioner has the burden of proving that respondents' dismissal was for a cause allowed under the law and that they were afforded due process. However, it failed to discharge this burden. While it claims that the dismissal was due to the expiration of respondents' employment contracts and the termination of the transaction with Glory Japan, the facts and evidence show otherwise. Indeed, the periods of employment were imposed in circumvention of respondents' right to security of tenure. Time and again, we held that the practice of imposing a limited period in an employment contract to circumvent the constitutional guarantee on security of tenure should be struck down or disregarded as contrary to public policy or morals.[23] So it is in this case.

In sum, we find no reason to deviate from the findings of the Court of Appeals that respondents were regular employees and that they were illegally dismissed by petitioner.

Under Article 279[24] of the Labor Code, an employee who was illegally dismissed from work is entitled to reinstatement without loss of seniority rights, and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Where reinstatement is no longer feasible, separation pay shall be granted in lieu of reinstatement.[25]

It appears that respondents were paid the amount of Php91,015.15 corresponding to their payroll reinstatement from March 29, 1999 up to November 30, 2000.[26] The said amount should thus be deducted from the computation for respondents' backwages.

WHEREFORE, the petition is DENIED. The September 18, 2006 Decision and the February 6, 2007 Resolution of the Court of Appeals in CA-G.R. SP. No. 73377 are AFFIRMED with MODIFICATIONS. Respondents are entitled to: a) reinstatement, and if reinstatement is no longer feasible, separation pay equivalent to one (1) month pay for every year of service; b) full backwages from the time the compensation was withheld until actual reinstatement or, in case separation pay is proper, until finality of this Decision less the amount of Php90,015.15; and c) 13[th] Month Pay and Service Incentive Leave Pay reckoned from the start of their employment until actual reinstatement or, in case separation pay is proper, until finality of this Decision.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Reyes, JJ., concur.

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[1] Rollo, pp. 3-26.

[2]Id. at 28-40. Penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Martin S. Villarama, Jr. and Monina Arevalo-Zenarosa.

[3] Id. at 42-43.

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[4]Id. at 53-54.

[5]Id. at 57-58.

[6]Id. at 59.

[7] CA rollo, pp. 14-19.

[8]Id. at 18.

[9] Id. at 43-53.

[10]Rollo, pp. 39-40.

[11]Id. at 12-13.

[12] 419 Phil. 147 (2001).

[13] Id. at 155.

[14]G.R. No. 141464, September 21, 2005, 470 SCRA 461.

[15] Id. at 470, citing Kiamco v. National Labor Relations Commission, G.R. No. 129449, June 29, 1999, 309 SCRA 424, 432.

[16]Rollo, p. 34.

[17] Chua v. Court of Appeals, G.R. No. 125837, October 6, 2004, 440 SCRA 121, 133; citing Violeta v. National Labor Relations Commission, 345 Phil. 762 (1997).

[18]Rollo, pp. 35.

[19] G.R. No. 105033, February 28, 1994, 230 SCRA 423.

[20] G.R. No. 141717, April 14, 2004, 427 SCRA 408.

[21]Id. at 420.

[22] Vinoya v. National Labor Relations Commission, 381 Phil. 460, 482-483 (2000).

[23]Philips Semiconductors (Phils.), Inc. v. Fadriquela, supra at 421; Romares v. National Labor Relations Commission, 355 Phil. 835, 846 (1998); Salinas, Jr. v. National Labor Relations Commission, 377 Phil. 55, 63-64 (1999); Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission, G.R. No. 152427, August 9, 2005, 466 SCRA 265, 273.

[24] ART. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[25] F.F. Marine Corporation v. National Labor Relations Commission, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 172.

[26] Rollo, p. 21.

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