JUDY O. DACUITAL, EUGENIO L. MONDANO, JR., JOSEPH GALER, MARIANO MORALES, ROBERTO RUANCE, JOSEPH PORCADILLA, RAULITO PALAD, RICARDO DIGAMON, NONITO PRISCO, EULOGIO M. TUTOR, MEL...

G.R. No. 176748. September 01, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[6] dated September 25, 2006 and Resolution[7] dated February 14, 2007 in CA-G.R. SP No. 90377.

The case stemmed from the following factual and procedural antecedents:

Respondent L.M. Camus Engineering Corporation (LMCEC) is a domestic corporation duly organized and existing under and by virtue of Philippine laws, engaged in construction, engineering, and air-conditioning business; while respondent Luis M. Camus (Camus) is the company president.

Petitioners Judy O. Dacuital (Dacuital), Eugenio L. Mondano, Jr., Joseph Galer (Galer), Mariano Morales, Roberto Ruance (Ruance), Joseph Porcadilla, Raulito Palad (Palad), Ricardo Digamon (Digamon), Nonito Prisco, Eulogio M. Tutor, Melvin Pepito, Helyto N. Reyes (Reyes), Randolf C. Baludo (Baludo), Alberto Epondol, Rodelo A. Susper, Evaristo Vigori, Jonathan P. Ayaay, Felipe Erilla, Aris A. Garcia (Aris), Roy A. Garcia (Roy), and Restituto Tapanan (Tapanan) were hired by LMCEC as welder, tinsmith, pipefitter, and mechanical employees.[8]

During the months of January, February and March 2001, petitioners were required by LMCEC to surrender their identification cards and ATM cards and were ordered to execute contracts of employment. Most of the petitioners did not comply with the directive as they believed that it was only respondents' strategy to get rid of petitioners' regular status since they would become new employees disregarding their length of service. Petitioners were later dismissed from employment.[9]

Hence, the complaint for illegal dismissal and non-payment of monetary benefits filed by petitioners and other LMCEC employees who were similarly situated, namely: Guillermo S. Lucas (Lucas), Alvin Bontugay, Rector Palajos, and Hermes B. Pacatang (Pacatang), against respondents before the National Labor Relations Commission (NLRC). The employees alleged that they were illegally dismissed from employment and that their employer failed to pay them their holiday pay, premium pay for holiday, rest day, service incentive leave pay, and 13[th] month pay during the existence and duration of their employment. They also averred that they were not provided with sick and vacation leaves.[10]

Respondents denied that petitioners were illegally dismissed from employment. They claimed that petitioners were project employees and, upon the completion of each project, they were served notices of project

completion.[11] They clarified that the termination of petitioners' employment was due to the completion of the projects for which they were hired.[12]

Petitioners, however, countered that they were regular employees as they had been engaged to perform activities which are usually necessary or desirable in the usual business or trade of LMCEC. They denied that they were project or contractual employees because their employment was continuous and uninterrupted for more than one (1) year. Finally, they maintained that they were part of a work pool from which LMCEC drew its workers for its various projects.[13]

On July 24, 2002, Labor Arbiter (LA) Lilia S. Savari rendered a decision,[14] the dispositive portion of which reads:

> WHEREFORE, a Decision is hereby rendered declaring the dismissal of the complainants illegal. Corollarily, except for complainant Helyto N. Reyes, who has voluntarily withdrawn his case against the respondents, all the other complainants are hereby ordered to report to respondents for reinstatement but without backwages.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[15]

The LA did not give credence to respondents' claim that petitioners were project employees because of the former's failure to present evidence showing that petitioners' contracts of employment reflected the duration of each project for which they were employed and that respondents duly reported to the Department of Labor and Employment every termination of employment and project. As petitioners' dismissal was without just and valid cause, the LA ruled that their termination from employment was illegal. However, the LA refused to award backwages and other monetary claims on the ground that petitioners' employment was not continuous as they belonged to the regular work pool of LMCEC.[16]

The employees jointly filed a partial appeal to the NLRC, except Pacatang and Lucas who filed their separate appeal. On the other hand, the Administrative Officer of LMCEC issued individual communications to petitioners directing their reinstatement pursuant to the LA decision.[17]

On June 9, 2004, the NLRC modified[18] the LA decision, the dispositive portion of which reads:

> WHEREFORE, the employees enumerated above are hereby ordered reinstated with limited backwages, without loss of seniority rights and other privileges.
>
> The computation division of the RAB-NCR is hereby ordered to compute the award as herein established.
>
> SO ORDERED.[19]

The NLRC agreed with the LA that petitioners were illegally dismissed from employment. As a consequence of this pronouncement, the tribunal deemed it proper not only to reinstate them to their original position but also to give them their backwages. However, in view of the delayed resolution of the case that could not be attributed to respondents, the NLRC limited the award of backwages from the date of dismissal up to six (6) months after the case was elevated on appeal on September 23, 2002.[20] The appeal filed by Pacatang and Lucas was dismissed for having been filed out of time.

Respondents and complainants Pacatang and Lucas moved for the reconsideration of the NLRC decision. In a Resolution[21] dated April 11, 2005, the NLRC denied the motion for reconsideration filed by respondents, but granted that of Pacatang and Lucas, thereby entitling the latter to receive backwages.

Petitioners subsequently moved for the execution of the NLRC decision. Respondents, however, filed a

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Clarificatory Motion and Opposition to the Motion for Issuance of Entry of Judgment and Writ of Execution and for Recomputation of the Monetary Award[22] in view of respondents' petition before the CA and the reinstatement of some of the employees.

In an Order[23] dated August 23, 2005, the NLRC granted the motion. The NLRC took into consideration the fact that some of the employees who were earlier dismissed from employment had actually been reinstated. Hence, it limited the award of backwages from illegal dismissal up to the date of actual reinstatement. These employees who were actually reinstated were Galer, Ruance, Palad, Digamon, Aris, Roy, and Baludo.[24]

In the meantime, in their petition before the CA, respondents obtained a favorable decision when the appellate court declared petitioners' termination from employment valid and legal and consequently set aside the award of backwages.[25] The pertinent portion of the decision reads:

> IN VIEW WHEREOF, the Petition is GRANTED. The assailed Decision (dated June 9, 2004) of the National Labor Relations Commission is hereby MODIFIED. The termination from employment of the public respondents herein are declared valid and legal. Their award of backwages computed from the date of their termination are (sic) SET ASIDE.
>
> SO ORDERED.[26]

Contrary to the conclusions of the LA and the NLRC, the CA held that petitioners were project employees as their employment contracts provided that their respective tenures of employment were dependent on the duration of the construction projects. As such employees, their employment could lawfully be terminated upon the completion of the project for which they were hired. Consequently, there was no illegal dismissal.[27] Petitioners' motion for reconsideration was denied on February 14, 2007.[28]

Aggrieved, petitioners come to us seeking a review of the CA Decision, anchored on the following issues:

> - Whether or not the Findings of the Honorable Labor Arbiter as affirmed by the Honorable National Labor Relations Commission should be accorded high respect and finality.
>
> - Whether or not Petitioners were regular employees of respondent Corporation.
>
> - Whether or not Complainants were illegally dismissed from their employment.[29]

Petitioners aver that the CA erred in completely disregarding the findings of the LA, as affirmed by the NLRC, in view of the settled rule that findings of fact and conclusions of law of quasi-judicial agencies like the NLRC are generally entitled to great respect and even finality. They also insist that they were regular employees, considering that the services they rendered were not only necessary but also indispensable to LMCEC's business. They likewise claim that they had been in the service for a continuous period and a considerable length of time, and are in fact members of a work pool from which LMCEC draws its workers for its projects. Hence, even if they were initially hired as project employees, they eventually attained the status of regular employees. Petitioners also insist that they were illegally dismissed as their employment was terminated without just and valid cause, and without affording them due process of law. Lastly, petitioners claim that the NLRC had previously rendered decisions in favor of LMCEC employees who were similarly situated, hence, their case should also be decided in favor of labor.[30]

The petition is meritorious.

We discuss first the procedural issues.

Respondents point out that the decision of the LA had attained finality, except as to Palad, because of their failure

to appeal. They explain that the Memorandum on Appeal filed with the NLRC was verified only by Palad without stating therein that he did it in representation of the other petitioners. In view of the finality of the NLRC decision, the instant petition should not prosper.

We do not agree.

Our pronouncement in Pacquing v. Coca-Cola Philippines, Inc.[31] is instructive.

> As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After all, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.
>
> Moreover, no less than the Labor Code directs labor officials to use reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities; while Section 10, Rule VII of the New Rules of Procedure of the NLRC provides that technical rules are not binding. Indeed, the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice. Thus, the execution of the verification in the appeal memorandum by only two complainants in behalf of the other complainants also constitute substantial compliance.[32]

Clearly, the NLRC properly took cognizance of the appeal of all the named complainants even though it was signed by only one of them. While the right to appeal is a statutory and not a natural right, it is nonetheless an essential part of our judicial system. Courts are, therefore, advised to proceed with caution, so as not to deprive a party of the right to appeal. Litigants should have the amplest opportunity for the proper and just disposition of their cause - free, as much as possible, from the constraints of procedural technicalities.[33] Thus, contrary to respondents' claim, the decision had not attained finality even as to those who did not sign the appeal memorandum.

Now on the substantive aspect.

The issues boil down to whether the CA was correct in concluding that petitioners were project employees and that their dismissal from employment was legal.

We answer in the negative.

Even if the questions that need to be settled are factual in nature, this Court nevertheless feels obliged to resolve them due to the incongruent findings of the NLRC and the LA and those of the CA.[34]

Article 280 of the Labor Code distinguishes a "project employee" from a "regular employee" in this wise:

> Article 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 services 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.[35]

A project employee is assigned to a project which begins and ends at determined or determinable times.[36] Employees who work under different project employment contracts for several years do not automatically become regular employees; they can remain as project employees regardless of the number of years they work. Length of service is not a controlling factor in determining the nature of one's employment.[37] Their rehiring is only a natural consequence of the fact that experienced construction workers are preferred.[38] In fact, employees who are members of a "work pool" from which a company draws workers for deployment to its different projects do not become regular employees by reason of that fact alone. The Court has consistently held that members of a "work pool" can either be project employees or regular employees.[39]

The principal test used to determine whether employees are project employees is whether or not the employees were assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time the employees were engaged for that project.[40]

Admittedly, respondents did not present the employment contracts of petitioners except that of Dacuital. They explained that it was no longer necessary to present the other contracts since petitioners were similarly situated. Having presented one contract, respondents believed that they sufficiently established petitioners' status as project employees.

Even though the absence of a written contract does not by itself grant regular status to petitioners, such a contract is evidence that petitioners were informed of the duration and scope of their work and their status as project employees.[41] In this case, where no other evidence was offered, the absence of the employment contracts raises a serious question of whether the employees were properly informed at the onset of their employment of their status as project employees.[42]

While it is true that respondents presented the employment contract of Dacuital, the contract does not show that he was informed of the nature, as well as the duration of his employment. In fact, the duration of the project for which he was allegedly hired was not specified in the contract. The pertinent provision thereof is quoted hereunder for easy reference:

> 3. In accordance with Policy No. 20 of the Labor Code of the Philippines, parties agree that the effective date of this employment is 4-5-00 up to the duration of the DUCTWORK/ELECTRICAL/MECHANICAL phase of the project estimated to be finished in the month of _____, 19_____ or earlier.[43]

Even if we assume that under the above provision of the contract, Dacuital was informed of the nature of his employment and the duration of the project, that same contract is not sufficient evidence to show that the other employees were so informed. It is undisputed that petitioners had individual employment contracts, yet respondents opted not to present them on the lame excuse that they were similarly situated as Dacuital. The non-presentation of these contracts gives rise to the presumption that the employees were not informed of the nature and duration of their employment. It is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid. Absent any other proof that the project employees were informed of their status as such, it will be presumed that they are regular employees.[44]

Moreover, Department Order No. 19 (as well as the old Policy Instructions No. 20) requires employers to submit a report of an employee's termination to the nearest public employment office everytime the employment is terminated due to the completion of a project.[45] In this case, there was no evidence that there was indeed such a

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report. LMCEC's failure to file termination reports upon the cessation of petitioners' employment was an indication that petitioners were not project but regular employees.

Well-established is the rule that regular employees enjoy security of tenure and they can only be dismissed for just or valid cause and upon compliance with due process, i.e., after notice and hearing. In cases involving an employee's dismissal, the burden is on the employer to prove that the dismissal was legal.[46] This burden was not amply discharged by LMCEC in this case. Being regular employees, petitioners were entitled to security of tenure, and their services may not be terminated except for causes provided by law.[47]

Finally, records failed to show that LMCEC afforded petitioners, as regular employees, due process prior to their dismissal, through the twin requirements of notice and hearing. Petitioners were not served notices informing them of the particular acts for which their dismissal was sought. Nor were they required to give their side regarding the charges made against them, if any. Certainly, petitioners' dismissal was not carried out in accordance with law and was, therefore, illegal.[48]

Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement, full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent from the time his compensation was withheld from him up to the time of his actual reinstatement.[49]

Contrary to the conclusion of the NLRC, the backwages due petitioners must be computed from the time they were unjustly dismissed until actual reinstatement to their former positions. Thus, until LMCEC implements the reinstatement aspect, its obligation to petitioners, insofar as accrued backwages and other benefits are concerned, continues to accumulate.[50]

The fact that petitioners did not appeal the NLRC decision on this matter does not bar this Court from ordering its modification. As held in Cocomangas Hotel Beach Resort v. Visca[51]¾

> While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, this Court is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice.
>
> Besides, substantive rights like the award of backwages resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules. The computation of the award for backwages from the time compensation was withheld up to the time of actual reinstatement is a mere legal consequence of the finding that respondents [petitioners] were illegally dismissed by petitioners [respondents].[52]

As to respondent Camus' liability as LMCEC president, it is settled that in the absence of malice, bad faith, or specific provision of law, a director or officer of a corporation cannot be made personally liable for corporate liabilities.[53]

As held in Lowe, Inc. v. Court of Appeals,[54] citing McLeod v. NLRC:[55]

> Personal liability of corporate directors, trustees or officers attaches only when (1) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary their written objection; (3) they agree to hold themselves personally and solidarily liable with the corporation; or (4) they are made by specific provision of law personally answerable for their corporate action.[56]

To be sure, Camus has a personality which is distinct and separate from that of LMCEC. There was no proof that Camus acted in bad faith in dismissing petitioners from employment. The mere fact that he is the president of the company does not make him personally liable for the payment of backwages.

Finally, the Court notes that although Tapanan was named as petitioner, he was never included as a complainant before the NLRC. As such, he is not a party to this case. Moreover, as clearly stated in the LA decision, Reyes has voluntarily withdrawn his case against respondents. Thus, although he is one of the petitioners here, he is not covered by this Decision. Lastly, some of the petitioners had already been actually reinstated by LMCEC. We emphasize that the computation of their backwages should be up to the date of actual reinstatement.

WHEREFORE, premises considered, the petition is GRANTED. The Court of Appeals Decision dated September 25, 2006 and Resolution dated February 14, 2007 in CA-G.R. SP No. 90377 are REVERSED and SET ASIDE. Petitioners' dismissal from employment is declared illegal and, except Helyto N. Reyes and Restituto Tapanan, they are entitled to full backwages from the time of illegal dismissal until actual reinstatement.

SO ORDERED.

Carpio, (Chairperson), Bersamin,[*] Abad, and Mendoza, JJ., concur.

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[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 882 dated August 31, 2010.

[1] Also referred to in the records as Judy O. Daquital.

[2] Also referred to in the records as Joseph Goles.

[3] Also referred to in the records as Helyton Reyes.

[4] Also referred to in the records as Ridolo A. Susper.

[5] Also referred to in the records as Evaristo Vigor.

[6] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Regalado E. Maambong and Ramon M. Bato, Jr., concurring; rollo, pp. 33-56.

[7] Id. at 88-89.

[8] Id. at 35-36.

[9] Id. at 94.

[10] Id. at 93.

[11] Id. at 94-95.

[12] Id. at 97.

[13] Id. at 95-96.

[14] CA rollo, pp. 136-145.

[15] Id. at 145.

[16] Rollo, pp. 97-98.

[17] CA rollo, pp. 303-346.

[18] Embodied in a decision rendered by the First Division. Penned by Commissioner Ernesto S. Dinopol, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring; rollo, pp. 99-115.

[19] Id. at 114.

[20] Id. at 107-114.

[21] CA rollo, pp. 274-278.

[22] Id. at 434-437.

[23] Id. at 438-440.

[24] Id. at 439.

[25] Supra note 6.

[26] Id. at 55.

[27] Id. at 52-55.

[28] Supra note 7.

[29] Rollo, p. 432.

[30] Id. at 432-443.

[31] G.R. No. 157966, January 31, 2008, 543 SCRA 344.

[32] Id. at 356-357. (Citations omitted.)

[33] Kimberly Independent Labor Union for Solidarity, Activisim and Nationalism (KILUSAN)-Organized Labor Associations in Line Industries and Agriculture (OLALIA) v. Court of Appeals, G.R. Nos. 149158-59 and 156668, July 24, 2007, 528 SCRA 45, 62.

[34] Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez, G.R. No. 170181, June 26, 2008, 555 SCRA 537, 549.

[35] Emphasis supplied.

[36] Goma v. Pamplona Plantation, Incorporated, G.R. No. 160905, July 4, 2008, 557 SCRA 124, 134.

[37] Abesco Construction and Development Corporation v. Ramirez, G.R. No. 141168, April 10, 2006, 487 SCRA 9, 14.

[38] Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez, supra note 34, at 550.

[39] Abesco Construction and Development Corporation v. Ramirez, supra note 37, at 14.

[40] Goma v. Pamplona Plantation, Incorporated, supra note 36, at 135; Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez, supra note 34, at 550.

[41] Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez, supra note 34, at 553.

[42] Id.

[43] CA rollo, p. 387.

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[44] Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez, supra note 34, at 553.

[45] Goma v. Pamplona Plantation, Incorporated, supra note 36, at 135.

[46] Id. at 136.

[47] Cocomangas Hotel Beach Resort v. Visca, G.R. No. 167045, August 29, 2008, 563 SCRA 705, 721.

[48] Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez, supra note 34, at 559.

[49] Cocomangas Hotel Beach Resort v. Visca, supra note 47, at 721.

[50] Id.

[51] Id.

[52] Id. at 722.

[53] Lowe, Inc v. Court of Appeals, G.R. Nos. 164813 and 174590, April 14, 2009, 596 SCRA 140.

[54] Id.

[55] G.R. No. 146667, January 23, 2007, 512 SCRA 222.

[56] Lowe, Inc. v. Court of Appeals, supra note 53, at 155.

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