

MIGUEL DELA BARAIRO, PENA PETITIONER, VS. OFFICE OF THE PRESIDENT AND MST MARINE SERVICES (PHILS.), INC. RESPONDENT.

G.R. No. 189314. June 15, 2011

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Miguel Barairo (petitioner) was hired[1] on June 29, 2004 by respondent MST Marine Services (Phils.) Inc., (MST) for its principal, TSM International, Ltd., as Chief Mate of the vessel Maritina, for a contract period of six months. He hoarded the vessel and discharged his duties on July 23, 2004. but was relieved[2] on August 28, 2004 ostensibly for transfer to another vessel, Solar. Petitioner thus disembarked in Manila on August 29, 2004.

Petitioner was later to claim that he was not paid the promised "standby fee" in lieu of salary that he was to receive while awaiting transfer to another vessel as in fact the transfer never materialized.

On October 20, 2004, petitioner signed a new Contract of Employment[3] for a six-month deployment as Chief Mate in a newly-built Japanese vessel. M/T Haruna. He was paid a one-month "standby lee" in connection with the Maritina contract.

Petitioner boarded the M/T Haruna on October 31, 2004 tat he disembarked a week later as MST claimed that his boarding of M/T Haruna was a "sea trial" which, MST maintains, was priorly made known to him on a "stand-by" fee. MST soon informed petitioner that he would be redeployed to the M/T Haruna on November 30, 2004, but petitioner refused, prompting MST to file a complaint[4] for breach of contract against him before the Philippine Overseas Employment Administration (POEA).

Petitioner claimed, however, that he was placed on "forced vacation"1 when he was made to disembark from the M/T Haruna, and that not wanting to experience a repetition of the previous "termination" of his employment aboard the Maritina, he refused to be redeployed to the M/T Haruna.

By Order[5] of April 5, 2006, then POEA Administrator Rosalinda D Baldoz penalized petitioner with one year suspension from overseas deployment upon a finding that his refusal to complete his contract aboard the M/T Haruna constituted a breach thereof.

On appeal by petitioner, the Secretary of Labor, by Order[6] of September 22, 2006, noting that it was petitioner's first offense, modified the POEA Order by shortening the period of suspension from one year to six months.

The Office of the President (OP), by Decision[7] of November 26, 2007. dismissed petitioner's appeal for lack of jurisdiction, citing National Federation of Labor v. Laguesma.[8]

The OP held that appeals to it in labor cases, except those involving national interest, have been eliminated. Petitioner's motion for partial reconsideration was denied by Resolution[9] of June 26, 2009. hence, the present petition.

Following settled jurisprudence, the proper remedy to question the decisions or orders o the Secretary of Labor is

via Petition for Certiorari under Rule 65. nol via an appeal to the OP. For appeals to the OP in labor cases have indeed been eliminated, except those involving national interest over which the President may assume jurisdiction. The rationale behind this development is mirrored in the OP's Resolution of June 26, 2009 the pertinent portion of which reads:

. . [T]he assailed DOLE'S Orders were both issued by Undersecretary Danilo P. Cruz under the authority of the DOLE Secretary vvho is the alter ego of the President. Under the "Doctrine of Qualified Political Agency," a corollary rule to the control powers of the President, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business are, unless disapproved or reprobated by the Chief Executive presumptively the of the Chief Executive. [10] (emphasis and underscoring supplied)

It cannot be gainsaid that petitioner's case does not involve national interest.

Petitioner's appeal of the Secretary of Labor's Decision to the Office of the President did not toll the running of the period, hence, the assailed Decisions of the Secretary of Labor are deemed to have attained finality.

Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court - not even the Supreme Court - has the power to revise, review, change or after the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[11] (underscoring in the original emphasis supplied)

At all events, on the merits, (he petition just the same fails.

As found by the POEA Administrator and the Secretary of Labor, through Undersecretary Danilo P. Cruz, petitioner's refusal to board the M/T Haruna on November 30, 2004 constituted unjustified breach of his contract of employment under Section 1 (A-2) Rule II. Part VI [sic] of the POEA Seabased Rules and Regulations.[12] That petitioner believed that respondent company violated his rights when the period of his earlier Martina contract was not followed and his "stand-by fees" were not fully paid did not justify his refusal to abide by the valid and existing Haruna contract requiring him to serve aboard M/T Haruna. For, as noted in the assailed DOLE Order, "if petitioner's rights has been violated as he claims, he has various remedies under the contract winch he did not avail of

Parenthetically, the Undersecretary of Labor declared that "the real reason [petitioner] refused to re-join Haruna on November 30, 2004, is that he left the Philippines on November 29, 2004 to join MT Adriatiki, a vessel of another maiming agency," which declaration petitioner has not refuted.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Vide Contract of Employment, rollo, p. 110.

[2] Id. at 112.

[3] Ibid.

[4] Vide Complaint-Affidavit of Captain Alfonso R. del Castillo, id. at 113-114.

[5] Id. at 132-134.

[6] Id. at 174-177. Penned by Undersecretary Danilo P. Cruz.

[7] Id. at 55-66. Penned by Undersecretary Pilita P. Quizon-Venturanza.

[8] G.R. No. 123426, March 10, 1999, 304 SCRA 405.

[9] Rollo, pp. 105-108. Penned by Undersecretary Pilita P. Quizon-Venturanza.

[10] Vide June 26, 2009 Resolution of the Office of the President, id. at 105-108 at 107.

[11] Land Bank of the Philippines v. Court of Appeals, G.R. No. 190660. April 11, 2011 citing Zamboanga Forest Managers Corp. v. New Pacific Timber and Supply Co., et at., G.R. No. 143275, 399 SCRA 376, 385.

[12] RULE II Disciplinary Action Against Seafarers

SECTION 1. Grounds for Disciplinary Action and their Penalties. — Commission by a seafarer of any of the offenses enumerated below or of similar offenses shall be a ground for disciplinary action for which the corresponding penalty shall be imposed:

A. Pre-Employment Offenses

1. Submission/furnishing or using false information or documents or any form of misrepresentation for purpose of job application or employment.

1st Offense: One year to two years suspension from participation in the overseas employment program

2nd Offense- I wo years and oik da)'suspension from participation in the overseas employment program to Delisting front the POEA Registry

2. Unjust refusal to join ship after all employment and travel documents have been duly approved by Hie appropriate government agencies.

1st Offense: One year to two years suspension from participation in the overseas employment program

2nd offense: Two years and one day suspension from participation in the overseas employment program to Delisting from the POEA Registry (emphasis supplied)

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