NELSON V. BEGINO, GENER DEL VALLE, MONINA AVILA-LLORIN AND MA. CRISTINA SUMAYAO, PETITIONERS, VS. ABS-CBN CORPORATION (FORMERLY, ABS-CBN BROADCASTING CORPORATION) AND AMALIA VIL...

G.R. No. 199166. April 20, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

The existence of an employer-employee relationship is at the heart of this Petition for Review on Certiorari filed pursuant to Rule 45 of the Rules of Court, primarily assailing the 29 June 2011 Decision[1] rendered by the Fourth Division of the Court of Appeals (CA) in CA-G.R. SP No. 116928 which ruled out said relationship between the parties.

The Facts

Respondent ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation) is a television and radio broadcasting corporation which, for its Regional Network Group in Naga City, employed respondent Amalia Villafuerte (Villafuerte) as Manager. There is no dispute regarding the fact that, thru Villafuerte, ABS-CBN engaged the services of petitioners Nelson Begino (Begino) and Gener Del Valle (Del Valle) sometime in 1996 as Cameramen/Editors for TV Broadcasting. Petitioners Ma. Cristina Sumayao (Sumayao) and Monina Avila-Llorin (Llorin) were likewise similarly engaged as reporters sometime in 1996 and 2002, respectively. With their services engaged by respondents thru Talent Contracts which, though regularly renewed over the years, provided terms ranging from three (3) months to one (1) year, petitioners were given Project Assignment Forms which detailed, among other matters, the duration of a particular project as well as the budget and the daily technical requirements thereof. In the aforesaid capacities, petitioners were tasked with coverage of news items for subsequent daily airings in respondents' TV Patrol Bicol Program.[2]

While specifically providing that nothing therein shall be deemed or construed to establish an employer-employee relationship between the parties, the aforesaid Talent Contracts included, among other matters, provisions on the following matters: (a) the Talent's creation and performance of work in accordance with the ABS-CBN's professional standards and compliance with its policies and guidelines covering intellectual property creators, industry codes as well as the rules and regulations of the Kapisanan ng mga Broadcasters sa Pilipinas (KBP) and other regulatory agencies; (b) the Talent's non-engagement in similar work for a person or entity directly or indirectly in competition with or adverse to the interests of ABS-CBN and non-promotion of any product or service without prior written consent; and (c) the results-oriented nature of the talent's work which did not require them to observe normal or fixed working hours.[3] Subjected to contractor's tax, petitioners' remunerations were denominated as Talent Fees which, as of last renewal, were admitted to be pegged per airing day at P273.35 for Begino, P302.92 for Del Valle, P323.08 for Sumayao and P315.39 for Llorin.[4]

Claiming that they were regular employees of ABS-CBN, petitioners filed against respondents the complaint[5]

docketed as Sub-RAB 05-04-00041-07 before the National Labor Relations Commission's (NLRC) Sub-Regional Arbitration Branch No. 5, Naga City. In support of their claims for regularization, underpayment of overtime pay, holiday pay, 13[th] month pay, service incentive leave pay, damages and attorney's fees, petitioners alleged that they performed functions necessary and desirable in ABS-CBN's business. Mandated to wear company IDs and provided all the equipment they needed, petitioners averred that they worked under the direct control and supervision of Villafuerte and, at the end of each day, were informed about the news to be covered the following day, the routes they were to take and, whenever the subject of their news coverage is quite distant, even the start of their workday. Due to the importance of the news items they covered and the necessity of their completion for the success of the program, petitioners claimed that, under pain of immediate termination, they were bound by the company's policy on, among others, attendance and punctuality.[6]

Aside from the constant evaluation of their actions, petitioners were reportedly subjected to an annual competency assessment alongside other ABS-CBN employees, as condition for their continued employment. Although their work involved dealing with emergency situations at any time of the day or night, petitioners claimed that they were not paid the labor standard benefits the law extends to regular employees. To avoid paying what is due them, however, respondents purportedly resorted to the simple expedient of using said Talent Contracts and/or Project Assignment Forms which denominated petitioners as talents, despite the fact that they are not actors or TV hosts of special skills. As a result of this iniquitous situation, petitioners asseverated that they merely earned an average of P7,000.00 to P8,000.00 per month, or decidedly lower than the P21,773.00 monthly salary ABS-CBN paid its regular rank-and-file employees. Considering their repeated re-hiring by respondents for ostensible fixed periods, this situation had gone on for years since TV Patrol Bicol has continuously aired from 1996 onwards.[7]

In refutation of the foregoing assertions, on the other hand, respondents argued that, although it occasionally engages in production and generates programs thru various means, ABS-CBN is primarily engaged in the business of broadcasting television and radio content. Not having the full manpower complement to produce its own program, the company had allegedly resorted to engaging independent contractors like actors, directors, artists, anchormen, reporters, scriptwriters and various production and technical staff, who offered their services in relation to a particular program. Known in the industry as talents, such independent contractors inform ABS-CBN of their availability and were required to accomplish Talent Information Forms to facilitate their engagement for and appearance on designated project days. Given the unpredictability of viewer preferences, respondents argued that the company cannot afford to provide regular work for talents with whom it negotiates specific or determinable professional fees on a per project, weekly or daily basis, usually depending on the budget allocation for a project.[8]

Respondents insisted that, pursuant to their Talent Contracts and/or Project Assignment Forms, petitioners were hired as talents, to act as reporters and/or cameramen for TV Patrol Bicol for designated periods and rates. Fully aware that they were not considered or to consider themselves as employees of a particular production or film outfit, petitioners were supposedly engaged on the basis of the skills, knowledge or expertise they already possessed and, for said reason, required no further training from ABS-CBN. Although petitioners were inevitably subjected to some degree of control, the same was allegedly limited to the imposition of general guidelines on conduct and performance, simply for the purpose of upholding the standards of the company and the strictures of the industry. Never subjected to any control or restrictions over the means and methods by which they performed or discharged the tasks for which their services were engaged, petitioners were, at most, briefed whenever necessary regarding the general requirements of the project to be executed.[9]

Having been terminated during the pendency of the case, Petitioners filed on 10 July 2007 a second complaint against respondents, for regularization, payment of labor standard benefits, illegal dismissal and unfair labor

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practice, which was docketed as Sub-RAB 05-08-00107-07. Upon respondents' motion, this complaint was dismissed for violation of the rules against forum shopping in view of the fact that the determination of the issues in the second case hinged on the resolution of those raised in the first.[10] On 19 December 2007, however, Labor Arbiter Jesus Orlando Quiñones (Labor Arbiter Quiñones) resolved Sub-RAB 05-04-00041-07 in favor of petitioners who, having rendered services necessary and related to ABS-CBN's business for more than a year, were determined to be its regular employees. With said conclusion found to be buttressed by, among others, the exclusivity clause and prohibitions under petitioners' Talent Contracts and/or Project Assignment Forms which evinced respondents' control over them,[11] Labor Arbiter Quiñones disposed of the case in the following wise:

> WHEREFORE, finding merit in the causes of action set forth by the complainants, judgment is hereby rendered declaring complainants MONINA AVILA-LLORIN, GENER L. DEL VALLE, NELSON V. BEGINO and MA. CRISTINA V. SUMAYAO, as regular employees of respondent company, ABS-CBN BROADCASTING CORPORATION.
>
> Accordingly, respondent ABS-CBN Broadcasting Corporation is hereby ORDERED to pay complainants, subject to the prescriptive period provided under Article 291 of the Labor Code, however applicable, the total amount of Php2,440,908.36, representing salaries/wage differentials, holiday pay, service incentive leave pay and 13[th] month pay, to include 10% of the judgment award as attorney's fees of the judgment award (computation of the monetary awards are attached hereto as integral part of this decision).
>
> Moreover, respondents are directed to admit back complainants to work under the same terms and conditions prevailing prior to their separation or, at respondents' option, merely reinstated in the payroll.
>
> Other than the above, all other claims and charges are ordered DISMISSED for lack of merit.[12]

Aggrieved by the foregoing decision, respondents elevated the case on appeal before the NLRC, during the pendency of which petitioners filed a third complaint against the former, for illegal dismissal, regularization, non-payment of salaries and 13[th] month pay, unfair labor practice, damages and attorney's fees. In turn docketed as NLRC Case No. Sub-RAB-V-05-03-00039-08, the complaint was raffled to Labor Arbiter Quiñones who issued an Order dated 30 April 2008, inhibiting himself from the case and denying respondents' motion to dismiss on the grounds of res judicata and forum shopping.[13] Finding that respondents' control over petitioners was indeed manifest from the exclusivity clause and prohibitions in the Talent Contracts and/or Project Assignment Forms, on the other hand, the NLRC rendered a Decision dated 31 March 2010, affirming said Labor Arbiter's appealed decision.[14] Undeterred by the NLRC's 31 August 2010 denial of their motion for reconsideration,[15] respondents filed the Rule 65 petition for certiorari docketed before the CA as CA-G.R. SP No. 116928 which, in addition to taking exceptions to the findings of the assailed decision, faulted petitioners for violating the rule against forum shopping.[16]

On 29 June 2011, the CA rendered the herein assailed decision, reversing the findings of the Labor Arbiter and the NLRC. Ruling out the existence of forum shopping on the ground that petitioners' second and third complaints were primarily anchored on their termination from employment after the filing of their first complaint, the CA nevertheless discounted the existence of an employer-employee relation between the parties upon the following findings and conclusions: (a) petitioners, were engaged by respondents as talents for periods, work and the program specified in the Talent Contracts and/or Project Assignment Forms concluded between them; (b) instead of fixed salaries, petitioners were paid talent fees depending on the budget allocated for the program to which they were assigned; (c) being mainly concerned with the result, respondents did not exercise control over the manner and method by which petitioner accomplished their work and, at most, ensured that they complied with the standards of the company, the KBP and the industry; and, (d) the existence of an employer-employee relationship is not necessarily established by the exclusivity clause and prohibitions which are but terms and conditions on

which the parties are allowed to freely stipulate.[17]

Petitioners' motion for reconsideration of the foregoing decision was denied in the CA's 3 October 2011 Resolution,[18] hence, this petition.

The Issues

Petitioners seek the reversal of the CA's assailed Decision and

Resolution on the affirmative of the following issues:

1. Whether or not the CA seriously and reversibly erred in not dismissing respondents' petition for certiorari in view of the fact that they did file a Notice of Appeal at the NLRC level and did not, by themselves or through their duly authorized representative, verify and certify the Memorandum of Appeal they filed thereat, in accordance with the NLRC Rules of Procedure; and

2. Whether or not the CA seriously and reversibly erred in brushing aside the determination made by both the Labor Arbiter and the NLRC of the existence of an employer-employee relationship between the parties, despite established jurisprudence supporting the same.

The Court's Ruling

The Court finds the petition impressed with merit.

Petitioners preliminarily fault the CA for not dismissing respondents' Rule 65 petition for certiorari in view of the fact that the latter failed to file a Notice of Appeal from the Labor Arbiter's decision and to verify and certify the Memorandum of Appeal they filed before the NLRC. While concededly required under the NLRC Rules of Procedure, however, these matters should have been properly raised during and addressed at the appellate stage before the NLRC. Instead, the record shows that the NLRC took cognizance of respondents' appeal and proceeded to resolve the same in favor of petitioners by affirming the Labor Arbiter's decision. Not having filed their own petition for certiorari to take exception to the liberal attitude the NLRC appears to have adopted towards its own rules of procedure, petitioners were hardly in the proper position to raise the same before the CA or, for that matter, before this Court at this late stage. Aside from the settled rule that a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision[19] rendered, liberal interpretation of procedural rules on appeal had, on occasion, been favored in the interest of substantive justice.[20]

Although the existence of an employer-employee relationship is, on the other hand, a question of fact[21] which is ordinarily not the proper subject of a Rule 45 petition for review on certiorari like the one at bar, the conflicting findings between the labor tribunals and the CA justify a further consideration of the matter.[22] To determine the existence of said relation, case law has consistently applied the four-fold test, to wit: (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 on the means and methods by which the work is accomplished.[23] Of these criteria, the so-called "control test" is generally regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under this test, an employer-employee relationship is said to exist where the person for whom the services are performed reserves the right to control not only the end result but also the manner and means utilized to achieve the same.[24]

In discounting the existence of said relationship between the parties, the CA ruled that Petitioners' services were, first and foremost, engaged thru their Talent Contracts and/or Project Assignment Forms which specified the work to be performed by them, the project to which they were assigned, the duration thereof and their rates of pay according to the budget therefor allocated. Because they are imbued with public interest, it cannot be gainsaid,

however, that labor contracts are subject to the police power of the state and are placed on a higher plane than ordinary contracts. The recognized supremacy of the law over the nomenclature of the contract and the stipulations contained therein is aimed at bringing life to the policy enshrined in the Constitution to afford protection to labor.[25] Insofar as the nature of one's employment is concerned, Article 280 of the Labor Code of the Philippines also provides as follows:

> ART. 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 service 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 actually exists.

It has been ruled that the foregoing provision contemplates four kinds of employees, namely: (a) 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; (b) 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; (c) seasonal employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season; and (d) casual employees or those who are not regular, project, or seasonal employees.[26] To the foregoing classification of employee, jurisprudence has added that of contractual or fixed term employee which, if not for the fixed term, would fall under the category of regular employment in view of the nature of the employee's engagement, which is to perform activity usually necessary or desirable in the employer's business.[27]

The Court finds that, notwithstanding the nomenclature of their Talent Contracts and/or Project Assignment Forms and the terms and condition embodied therein, petitioners are regular employees of ABS-CBN. Time and again, it has been ruled that the test to determine whether employment is regular or not is the reasonable connection between the activity performed by the employee in relation to the business or trade of the employer.[28] As cameramen/editors and reporters, petitioners were undoubtedly performing functions necessary and essential to ABS-CBN's business of broadcasting television and radio content. It matters little that petitioners' services were engaged for specified periods for TV Patrol Bicol and that they were paid according to the budget allocated therefor. Aside from the fact that said program is a regular weekday fare of the ABS-CBN's Regional Network Group in Naga City, the record shows that, from their initial engagement in the aforesaid capacities, petitioners were continuously re-hired by respondents over the years. To the mind of the Court, respondents' repeated hiring of petitioners for its long-running news program positively indicates that the latter were ABS-CBN's regular employees.

If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated or continuing performance as sufficient evidence of the necessity, if not indispensability of that activity in the business.[29] Indeed, an employment stops being co-terminous with specific projects where the employee is continuously re-hired due to the demands of the employer's business.[30] When circumstances show, moreover, that contractually stipulated periods of employment have been imposed to preclude the acquisition of tenurial security by the employee, this Court has not hesitated in striking down such

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arrangements as contrary to public policy, morals, good customs or public order.[31] The nature of the employment depends, after all, on the nature of the activities to be performed by the employee, considering the nature of the employer's business, the duration and scope to be done, and, in some cases, even the length of time of the performance and its continued existence.[32] In the same manner that the practice of having fixed-term contracts in the industry does not automatically make all talent contracts valid and compliant with labor law, it has, consequently, been ruled that the assertion that a talent contract exists does not necessarily prevent a regular employment status.[33]

As cameramen/editors and reporters, it also appears that petitioners were subject to the control and supervision of respondents which, first and foremost, provided them with the equipments essential for the discharge of their functions. Prepared at the instance of respondents, petitioners' Talent Contracts tellingly provided that ABS-CBN retained "all creative, administrative, financial and legal control" of the program to which they were assigned. Aside from having the right to require petitioners "to attend and participate in all promotional or merchandising campaigns, activities or events for the Program," ABS-CBN required the former to perform their functions "at such locations and Performance/Exhibition Schedules" it provided or, subject to prior notice, as it chose determine, modify or change. Even if they were unable to comply with said schedule, petitioners were required to give advance notice, subject to respondents' approval.[34] However obliquely worded, the Court finds the foregoing terms and conditions demonstrative of the control respondents exercised not only over the results of petitioners' work but also the means employed to achieve the same.

In finding that petitioners were regular employees, the NLRC further ruled that the exclusivity clause and prohibitions in their Talent Contracts and/or Project Assignment Forms were likewise indicative of respondents' control over them. Brushing aside said finding, however, the CA applied the ruling in Sonza v. ABS-CBN Broadcasting Corporation[35] where similar restrictions were considered not necessarily determinative of the existence of an employer-employee relationship. Recognizing that independent contractors can validly provide his exclusive services to the hiring party, said case enunciated that guidelines for the achievement of mutually desired results are not tantamount to control. As correctly pointed out by petitioners, however, parallels cannot be expediently drawn between this case and that of Sonza case which involved a well-known television and radio personality who was legitimately considered a talent and amply compensated as such. While possessed of skills for which they were modestly recompensed by respondents, petitioners lay no claim to fame and/or unique talents for which talents like actors and personalities are hired and generally compensated in the broadcast industry.

Later echoed in Dumpit-Murillo v. Court of Appeals,[36] this Court has rejected the application of the ruling in the Sonza case to employees similarly situated as petitioners in ABS-CBN Broadcasting Corporation v. Nazareno.[37] The following distinctions were significantly observed between employees like petitioners and television or radio personalities like Sonza, to wit:

> First. In the selection and engagement of respondents, no peculiar or unique skill, talent or celebrity status was required from them because they were merely hired through petitioner's personnel department just like any ordinary employee.
>
> Second. The so-called "talent fees" of respondents correspond to wages given as a result of an employer-employee relationship. Respondents did not have the power to bargain for huge talent fees, a circumstance negating independent contractual relationship.
>
> Third. Petitioner could always discharge respondents should it find their work unsatisfactory, and respondents are highly dependent on the petitioner for continued work.
>
> Fourth. The degree of control and supervision exercised by petitioner over respondents through its supervisors negates the allegation that respondents are independent contractors.

> The presumption is that when the work done is an integral part of the regular business of the employer and when the worker, relative to the employer, does not furnish an independent business or professional service, such work is a regular employment of such employee and not an independent contractor. The Court will peruse beyond any such agreement to examine the facts that typify the parties' actual relationship.[38] (Emphasis omitted)

Rather than the project and/or independent contractors respondents claim them to be, it is evident from the foregoing disquisition that petitioners are regular employees of ABS-CBN. This conclusion is borne out by the ineluctable showing that petitioners perform functions necessary and essential to the business of ABS-CBN which repeatedly employed them for a long-running news program of its Regional Network Group in Naga City. In the course of said employment, petitioners were provided the equipments they needed, were required to comply with the Company's policies which entailed prior approval and evaluation of their performance. Viewed from the prism of these considerations, we find and so hold that the CA reversibly erred when it overturned the NLRC's affirmance of the Labor Arbiter's finding that an employer-employee relationship existed between the parties. Given the fact, however, that Sub-RAB-V-05-03-00039-08 had not been consolidated with this case and appears, for all intents and purposes, to be pending still, the Court finds that the reinstatement of petitioners ordered by said labor officer and tribunal should, as a relief provided in case of illegal dismissal, be left for determination in said case.

WHEREFORE, the Court of Appeals' assailed Decision dated 29 June 2011 and Resolution dated 3 October 2011 in CA-G.R. SP No. 116928 are REVERSED and SET ASIDE. Except for the reinstatement of Nelson V. Begino, Gener Del Valle, Monina Avila-Llorin and Ma. Cristina Sumayao, the National Labor and Relations· Commission's 31 March 2010 Decision is, accordingly, REINSTATED.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe, JJ., concur.

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[1] Rollo, pp. 28-49; Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Mariflor P. Punzalan-Castillo and Franchito N. Diamante concurring.

[2] Id. at 255-258; 336-337.

[3] Id.

[4] Id. at 198.

[5] Id. at 362-370.

[6] Id. at 399-451.

[7] Id.

[8] Id. at 372-398.

[9] Id.

[10] Id. at 201-202.

[11] Id. at 69-81.

[12] Id. at 80.

[13] Id. at 205-206.

[14] Id. at 83-90.

[15] Id. at 91-93.

[16] Id. at 577-653.

[17] Id. at 28-48.

[18] Id. at 66-67.

[19] Cabatulan v. Buat, 491 Phil. 421, 430 (2005).

[20] Mabuhay Development Industries v. NLRC, 351 Phil. 227, 234-235 (1998).

[21] Atok Big Wedge Company, Inc. v. Gison, G.R. No. 169510, 8 August 2011, 655 SCRA 193, 202.

[22] Maribago Bluewater Beach Resort, Inc. v. Dual, G.R. No. 180660, 20 July 2010, 625 SCRA 147, 155.

[23] Bernarte v. Philippine Basketball Association, G.R. No. 192084, 14 September 2011, 657 SCRA 745, 754.

[24] Abante, Jr. v. Lamadrid Bearing & Parts Corp., G.R. No. 159890, 28 May 2004, 430 SCRA 368, 379.

[25] GMA Network, Inc. v. Pabriga, G.R. No. 176419, 27 November 2013, 710 SCRA 690, 699.

[26] Leyte Geothermnal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation, 662 Phil. 225, 233 (2011).

[27] Universal Robina Sugar Milling Corporation v. Acibo, G.R. No. 186439, 15 January 2014, 713 SCRA 596, 607.

[28] Malicdem v. Marulas Industrial Corporation, G.R. No. 204406, 26 February 2014, 717 SCRA 563, 573 citing Integrated Contractor and Plumbing Works, Inc. v. NLRC, 503 Phil. 875 (2005).

[29] Id.

[30] D.M. Consunji, Inc. v. Jamin, G.R. No. 192514, 18 April 2012, 670 SCRA 235, 249.

[31] Caramol v. NLRC, G.R. No. 102973, 24 August 1993, 225 SCRA 582, 586.

[32] Id. at 588 citing Baguio Country Club Corporation v. NLRC, G.R. No. 28 February 1992, 206 SCRA 643, 649-651.

[33] Dumpit-Murillo v. CA, 551 Phil. 725, 735 (2007).

[34] Rollo, p. 256

[35] G.R. No. 138051, 10 June 2004, 431 SCRA 583, 604.

[36] Supra note 33.

[37] 534 Phil. 306 (2006).

[38] Id. at 335-336.

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