

**PHILIPPINE JAI-ALAI & AMUSEMENT CORPORATION,
PETITIONER, VS. HON. JACOBO C. CLAVE, IN HIS CAPACITY AS
PRESIDENTIAL EXECUTIVE ASSISTANT, HON. AMADO G. INCIONG, IN
HIS CAPACITY AS...**

G.R. No. 54136. December 21, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Certiorari with Preliminary Injunction seeking to annul: 1) the Order of public respondent Vicente Leogardo, Jr., then Assistant Secretary of Labor, dated December 24, 1976, in Case No. R04-12-11832-76-LS entitled "Rufino Cadatal, Jr. and Antonio Delgra, Complainants, vs. Philippine Jai-Alai and Amusement Corporation, Respondent," directing the reinstatement of said complainants with full backwages from the time of their dismissal up to their actual reinstatement and without loss of seniority rights; 2) the Order of public respondent Amado G. Inciong, then Deputy Minister of Labor, dated July 13, 1977, affirming the said Decision; 3) the Decision of respondent Jacobo C. Clave as Presidential Executive Assistant, dated January 25, 1979, also affirming the appealed Order; and 4) the denials on March 19, 1979 and June 5, 1980 by said Office of petitioner's Motions for Reconsideration.

From the record, the facts relative to this case may be stated as follows: Petitioner is a corporation operating a jai-alai fronton for sport and amusement. It has its own maintenance group for the upkeep of its premises. For the renovation of its main building, which work is not included in maintenance, it hired private respondents, Cadatal, Jr., a plumber, and Delgra, a mason, together with 30 other workers on February 2, 1976 for a period of one month, to continue even after that period should their services be needed further in the renovation work. This renovation was completed by the end of October 1976. However, management decided to construct an Annex to the Building, and private respondents were assigned to work on a fire escape. On November 27, 1976, private respondents received notice of termination effective November 29, 1976, but since minor repairs were still needed, they worked up to December 11, 1976 and were fully paid for their labor up to that date.

On December 13, 1976, petitioner filed with the former Department of Labor a report of termination of the services of private respondents and 30 others, due to completion of the project. The report listed them as "casual emergency workers."

A letter-complaint, dated December 13, 1976, was filed by private respondents with Regional Office No. 4 of the then Department of Labor, alleging termination without cause. On December 21, 1976, petitioner was summoned to appear before the Hearing Officer without being informed of the subject matter of the investigation. At the next hearing on December 23, 1976, petitioner was formally furnished copy of the letter-complaint. Petitioner was given time to file an Answer on or before December 27, 1976, which it did. But before the Answer could be filed, a summary Order was issued by respondent Leogardo, Jr., dated December 24, 1976, for reinstatement with full backwages, stating that the nature of the jobs performed by private respondents was necessary and desirable in the

usual business or trade of petitioner; that they are regular employees pursuant to Article 170 (now Article 281) of the Labor Code; and that their termination was without just cause.

The Order of December 24, 1976 was, on appeal, affirmed by respondent Inciong in an Order dated July 13, 1977. This Order was in turn appealed to the Office of the President. The appeal was dismissed for lack of merit by respondent Clave on January 25, 1979, reiterating that the nature of private respondents' employment as maintenance helpers was necessary and/or desirable to petitioner's business and that the dismissal was in violation of Article 281 of the Labor Code. Petitioner's Motion for Reconsideration was denied on March 19, 1979. On April 26, 1980, an Alias Writ of Execution was issued to collect from petitioner corporation the total amount of P26,260.00, representing private respondents' full backwages. And, on June 5, 1980, a second Motion for Reconsideration, dated April 24, 1980, was denied by respondent Clave, since only one such Motion is allowed and the grounds invoked were substantially the same as those previously raised.

This Petition for Certiorari with Preliminary Injunction was filed on June 27, 1980. A temporary restraining order was issued by this Court on July 7, 1980, enjoining the respondents from implementing the Order, dated December 24, 1976, as well as subsequent Orders. On November 12, 1980, we gave due course to the Petition and required the submittal of simultaneous memoranda, which has been complied with by petitioner but not by private respondents.

Pivotal to the resolution of this controversy is the issue of whether or not private respondents are regular employees entitled to security of tenure. They maintain that they are, while petitioner contends that they are merely casual emergency workers employed for a particular job.

The pertinent provision of the Labor Code, as amended, reads:

"ART. 281. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements 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 actually exists."

Private respondents were hired for a specific project - to renovate the main building, where major repairs such as painting the main building, repair of the roof, cleaning of clogged water pipes and drains, and other necessary repairs were required.[1] It was made known, and so understood at the start of the hiring, that their services would last until the completion of the renovation.[2] They rendered service from February 2 to December 11, 1976, almost 11 months, but less than a year. In its Report to the Department of Labor, petitioner gave the reason for termination as "due to termination of project".[3] It was only private respondents Cadatal, Jr. and Delgra, out of the 32 hired for the renovation, who questioned their termination, the 30 other workers having acquiesced to their termination. Private respondents merely alleged in their letter-complaint that "kami'y inalís sa trabaho ng walang dahilan".[4] There could be no other reason, however, than that the termination of private respondents was because their services were no longer needed and they had nothing more to do since the project for which they were hired had been completed. The fact was not that private respondents were hired as maintenance helpers, because petitioner corporation had a regular maintenance force.[5] Private respondents, as well as the other 30

workers, were needed as additional hands for the renovation work and not for ordinary upkeep and maintenance. The erection of the fire escape and other small jobs after the renovation cannot be deemed maintenance but more of casual work.

The casual or limited character of private respondents' employment, therefore, is evident. They were engaged for a specific project or undertaking and fall within the exception provided for in Article 281 of the Labor Code, *supra*. Not being regular employees, it cannot be justifiably said that petitioner had dismissed them without just cause. They are not entitled to reinstatement with full backwages.

Lastly, although no longer necessary to the resolution of the petition, it is claimed by petitioner that it was denied due process of law, since the case below could not be the subject of a summary judgment as questions of fact and law are involved, and that even before the petitioner could file its Answer, a summary judgment was rendered by respondent Leogardo.

The comment of the Solicitor General on this point is hereunder quoted.

"Besides even granting *arguendo* that there was no hearing before respondent Leogardo, it cannot be denied that petitioner had the opportunity to present its own case and submit evidence in support thereof. From the decision of respondent Leogardo, petitioner filed a 10-page appeal to the Secretary of Labor, attaching thereto as Annex 'B' its Reply/Opposition to the complaint. From respondent Inciong's decision, petitioner filed a 7-page appeal with the Office of the President. Thus, on two occasions, petitioner was allowed to present and intelligibly argue the merits of its case. As held in *Maglasang v. Ople* (63 SCRA 508):

'It is thus apparent that even granting the absence of any hearing at the stage of mediation and fact-finding, petitioner was afforded the occasion to explain matters fully and present its side of the controversy twice, the first time in his appeal with respondent Commission and thereafter in the review conducted by respondent Secretary of Labor. It would follow that the objections premised on lack of respect for the due process guarantee lack support in the record (citing *Demaronsing vs. Tandayag*, 58 SCRA 484; *De Borja vs. Flores*, 62 Phil. 106; *Batangas Laguna Tayabas Co. vs. Cadiao*, 22 SCRA 987)'. "[6]

But here, the judgment below is being reversed because public respondents had overlooked certain facts of significance, notably, private respondents' employment for a specific project and other small jobs like the erection of the fire escape which cannot be deemed as maintenance, the existence of a regular maintenance force in petitioner corporation, their services for less than one year, and the circumstance that their thirty other co-workers accepted their termination without question, all of which are sufficient to alter the questioned Order.

WHEREFORE, the Order of public respondent Vicente Leogardo, Jr., dated December 24, 1976, and the Orders of the other public respondents dated July 13, 1977, January 25, 1979, March 19, 1979, and June 5, 1980, are hereby reversed and set aside. The Complaint for illegal dismissal against petitioner in Case No. R04-12-11832-76 LS (Regional Office No. IV, Department of Labor) is dismissed, and the Temporary Restraining Order heretofore issued is hereby made permanent.

No costs.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur.

[1] pp. 3 & 4, Reply/Opposition to Complaint; pp. 27 & 28, Rollo.

[2] *ibid.*

[3] p. 22, Rollo.

[4] p. 24, *ibid.*

[5] p. 5, Memorandum of Appeal; p. 36, Rollo.

[6] pp. 80 & 81, Rollo.

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