

MANUEL L. FERNANDEZ, PETITIONER, VS. GROLIER INTERNATIONAL, INC., THE MINISTER OF LABOR, AND THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 55312, December 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Before us are the petitioner's motion for reconsideration and the supplement to said motion of the decision of this Court in *Manuel L. Fernandez v. Grolier International, Inc., et al.* (146 SCRA 269).

In the above-mentioned case, we affirmed the decisions of the public respondents which dismissed the petitioner's complaint on the grounds of prescription and lack of jurisdiction.

The grounds relied upon in the motion for reconsideration filed on January 6, 1987 are:

"I. THE PETITIONER'S VERSION OF FACTS IS THE ONLY VERSION OF FACTS; AND,

"II. THE DISMISSAL OF THE INSTANT CASE ON THE GROUND OF PRESCRIPTION IS A CORRUPTION OF JUDICIAL PROCESS AS IT IS AS BASELESS AS IT WAS UNLAWFUL. (Rollo, p. 151)

On January 21, 1987, petitioner then filed a Supplement to the Motion for Reconsideration "to elucidate on the following vital legal issues, to wit:"

"1. The issue of prescription, which was never raised in the pleadings of the private respondent much less proved in the trial, unceremoniously, became the sole ground for dismissal of this case;

"2. The issue that petitioner worked in Sydney, Australia, under the same employment contract he had with the Philippine branch of Grolier International was sidetracked conveniently, despite the fact that the evidence of the petitioner regarding this matter stood unchallenged in the records of the proceedings;

"3. The ruling that under the circumstances of the case, the merits of the petitioner's claims against private respondent was unnecessary, is absurd and devoid of basis in law;

"4. The citation of Article 281 of the Labor Code of the Philippines has absolutely no relevance to the case at bar."

(Rollo, pp. 161-162)

The petitioner alleges that the failure of private respondent to specifically plead prescription in its position paper constitutes a waiver of the defense of prescription.

In the case of *Director of Lands v. Dano*, (96 SCRA 161,165), this Court held that "inasmuch as petitioner had never pleaded the statute of limitations, he is deemed to have waived the same."

It is true that there are exceptions to the rule that an action will not be declared to have prescribed if prescription is not expressly invoked. (*Garcia v. Mathis*, 100 SCRA 250). However, where considerations of substantial justice come in, it is better to resolve the issues on the basic merits of the case instead of applying the rule on prescription which the private respondent waived when it was not pleaded.

Moreover, the finding of prescription of the Labor Arbiter is not indubitable. It cannot be said that the petitioner was "dismissed" from employment on February 3, 1975 when he flew back to Manila from Australia. Both petitioner and private respondent treated the return to Manila as a condition precedent to the approval of Fernandez' immigration papers. He remained a Grolier's employee. As late as September, 1975 the respondent's Mr. William Murphy was still following up the petitioner's immigration papers with the Australian Embassy in Manila. It was only in May, 1976, three months before the instant case was filed with the Ministry of Labor and Employment, that Fernandez was dismissed by the private respondent after a final decision by Australian authorities that he could not enter Australia as an immigrant.

A careful review of the records in relation to the motion for reconsideration constrains us to grant the motion.

Petitioner Fernandez stresses that the private respondent chose to base its case solely on jurisdiction and lately on prescription. The respondent's version of the facts is based on an affidavit of Ronald Besaw but the affiant was never presented as a witness.

The petitioner cited the pertinent portion of the proceedings to support its contention that the proof upon which we earlier based our assessment of the facts is not evidence but consists of unsubstantiated allegations. The record states:

"ATTORNEY ALCANTARA

"Due to illness, I was not able to prepare a written motion to dismiss as I undertook some weeks ago, your Honor.

"However, if I may be allowed to file now or make an oral motion to dismiss in order not to prolong the proceedings, I would like to ask for the dismissal of the case on the ground that this Honorable Commission does not have any jurisdiction over the instant case.

"From the testimony of the complainant, it appears that he accepted work for the Grolier Society of Australia which is a corporation or an entity which is separate and distinct from the respondent in this case, the Grolier International, Inc., your Honor.

"Grolier International, Incorporated is a Philippine Corporation doing business in the Philippines.

"The action or the complaint of the complainant should be addressed and filed against the Grolier Society of Australia and should be filed not in the Philippines but in Australia, your Honor.

"The complainant worked in Australia and from his testimony it appears that he received his pay from the Grolier Society of Australia.

"His complaint, we reiterate should therefore be filed against the instant respondent, your Honor.

"That is all, your Honor.

"ATTORNEY PLANCO

"Yes, your Honor.

"We would like to register our opposition to the motion to dismiss this case on the ground of lack of jurisdiction on the part of this Honorable Office.

"It must be understood that Grolier International, Inc. is an international corporation by the very name it suggests, your Honor.

"By its very name, it transacts business in different parts of the world, your Honor, and many cases have been decided already like the case of Zulueta versus Cathay Pacific, the case of Ortigas versus Air France, which are all international corporations, your Honor.

"The complaint did not happen here but charges were filed here, your Honor.

"In this particular case, in the absence of any definite evidence to be presented here and challenged in the records of the defense is the fact that while the plaintiff performed functions in Australia and received pay there, all these were done under his employment contract with the Philippine Branch, unless defendant can present or show that there was an employment contract in Sydney whereby it would prove termination of relationship employment, rather, employment relationship with the Philippine Branch, the ground of lack of jurisdiction is without basis and entirely absurd, your Honor."

(Rollo, pp. 11-13)

and

"Attorney Planco

"Am I to understand that the respondent is relying entirely on the question of jurisdiction and there is no more intention on their part to present evidence in case of denial?

"Attorney Alcantara

"Not necessarily, since this is a question of jurisdiction, I don't think we could be precluded later from presenting evidence if the resolution on our motion to dismiss is adverse to us since this is a question of jurisdiction.

"Labor Arbiter

"So, the case is deemed submitted. (TSN, pp. 16-17, February 11, 1977) (Underscoring by the petitioner)" (Rollo, p. 152)

It may be recalled that Mr. Fernandez started working with Grolier International, Inc., Philippines on July 1, 1964 working his way to Comptroller and Executive Administrator. On June 27, 1974 he left for Sydney, Australia where he worked with Grolier Society, Ltd. of Australia from July 1, 1974 to February 3, 1975 with an annual salary of 8,000 Australian dollars. He had to return to the Philippines to follow up his immigration papers but on February 19, 1975, his bid for immigration status was not approved. In May, 1976, the denial became final.

The basic factual issue may be stated thus - Did Mr. Fernandez resign from his employment when he left for Australia or may his employment abroad be considered a continuation of his Philippine employment to entitle him to reinstatement and/or separation benefits?

A second and hard look at the case shows that even if we accept the private respondent's statement of facts in his pleadings and memorandum before us, when this statement is weighed against the petitioner's evidence submitted during the proceedings below, the balance would tilt in favor of the petitioner.

The records show that Grolier International is a company based in New York. The Philippine and Australian offices are both managed by the same person - Managing Director Ronald Besaw. It was Mr. Besaw who transferred Fernandez to Sydney to take the place of Janette Williams, accountant of the Australian office, who had resigned. To facilitate the travel and exit permit, Mr. Besaw made it appear that Fernandez would attend a

series of conferences in Australia when there were no such conferences. It just so happened that the services of Fernandez were needed in Sydney at the time.

The private respondent contends that the petitioner voluntarily resigned so he could migrate to Australia. It is highly unlikely that the petitioner who was already Comptroller and Executive Administrator of Grolier's Philippine operations would voluntarily resign and take his chances, at his age, in a foreign country if he had not been assured of continued employment at a higher income in Grolier's Australian operations. No resignation papers were signed and absolutely no reason for termination of employment is apparent from the records. Fernandez held the highest position open to a Filipino in his company.

The petitioner did not go to Australia as immigrant or prospective immigrant. His employer sent him abroad ostensibly for a series of seminars but actually to secure his services as an accountant or financial officer in Sydney. Considering the brighter prospects of employment with the Sydney office, the petitioner may have been very interested in being transferred there, applying for immigration papers, and working permanently in Australia. To interpret that desire and the acceptance of Mr. Besaw's order to go to Australia as tantamount to resignation would, however, be stretching the facts too thinly.

It is true that the Manila office and the Sydney office are different juridical entities separately incorporated in each of the two countries. However, the separate incorporation is dictated by requirements of law and convenience. As far as the mother multinational corporation is concerned, the Manila and Sydney offices are merely marketing arms of the same employer, distributing the same line of goods, and obeying unified management and operating rules. It is significant that there was never a contract of employment between the petitioner and Grolier's of Australia. The employment contract in the Philippines sufficed to cover Fernandez' seven months work in the Sydney office. Mr. Fernandez traveled to Sydney on a visitor's visa clearly stamped by Australian authorities with "Employment Prohibited".

There are other factual considerations.

The June 5, 1974 letter of Mr. Ronald Besaw asked petitioner Fernandez to attend "a series of conferences of finance executives of the company to be held in our Sydney Office starting June 27, 1974." (Rollo, p.9) He, therefore, went abroad on company business. His expenses were shared by the Manila and Sydney offices. Significantly, while Fernandez' fare to Sydney was shouldered by Grolier's International, the expenses for his return flight were deducted from his last salaries after the company decided not to give him back his position in the Philippine office.

Even when the petitioner had already returned to Manila on February 3, 1975, Mr. Besaw was still urging the Department of Immigration to facilitate Fernandez' immigration to Sydney with his family. (Rollo, p. 22). The same letter refers to Mr. Manuel L. Fernandez as "one of our executives in the Philippines", not as a former or resigned executive.

We, therefore, rule that the petitioner did not resign from his employment with the private respondent when he left for Sydney or when he returned to Manila. His services were terminated when it became final that the Australian authorities would not approve his transfer to the respondent's Sydney office as an immigrant worker.

WHEREFORE, the motion for reconsideration is hereby GRANTED. The questioned order and resolution of the public respondents are REVERSED and SET ASIDE. The private respondent is ordered to reinstate the petitioner with full backwages from February 3, 1975 but not to exceed three (3) years, without qualification or deduction. Should reinstatement be no longer possible, the private respondent is ordered to pay the petitioner separation pay based on the applicable law or company practise, whichever is higher, effective as of the end of the above three

(3) year period. The private respondent is further ordered to reimburse the petitioner the amount of P6,646.65 as return fare from Sydney to Manila.

SO ORDERED.

Fernan (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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