

MARCELINO OCHOCO, PETITIONER, VS. HON. NATIONAL LABOR RELATIONS COMMISSION, MANILA, AND MAÑALAC CONSTRUCTION COMPANY, RESPONDENTS.

G.R. No. 56363. February 24, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

In this petition for certiorari, petitioner prays that private respondent be ordered "to reinstate petitioner (him) to his former position with full backwages without loss of seniority, or if not feasible, for private respondent to pay petitioner separation pay from 1964 to the present as the circumstances warrant according to the sound discretion of the Honorable Court; and, in either way for private respondent to pay the incentive leave pay due the petitioner as prayed for by him in his position paper."

Petitioner Marcelino Ochoco was employed as a carpenter in private respondent's construction firm from March 1964 to June 1978, or for a period of fourteen (14) years when his services were terminated by the company. On June 13, 1978, petitioner filed with the Ministry of Labor a complaint against private respondent for illegal dismissal and service incentive leave pay, claiming that he was dismissed because he filed a complaint against respondent company for payment of legal holiday pay and 13th month pay under Presidential Decree No. 851.

Private respondent, in its position paper, claimed that Ochoco was not a regular employee but only a project worker assigned to various construction projects and that his work as a carpenter terminated with the completion of each project.

In August 1978, Director Roy V. Seneres of Region IV, Ministry of Labor, dismissed the complaint for lack of merit. On appeal, Deputy Minister Amado G. Inciong affirmed the order of dismissal "it appearing that the same is in accord with the evidence on record and the law applicable."

The only issue in this petition is whether or not petitioner Ochoco was a regular or permanent employee of private respondent or was just a project worker whose employment was co-terminous with each construction project to which he was assigned.

There is merit in the petition as We sustain the position of the Solicitor General that Marcelino Ochoco was a regular employee of private respondent's company, for the following reasons:

1. The allegation of petitioner that he had been employed as a carpenter in private respondent's construction firm for 14 years was not denied by the latter in its comment on the petition. On the contrary, petitioner, in his Motion for Reconsideration/Appeal (p. 27, Rollo) claimed that his premium accounts with the Social Security System had been paid by Arturo Mañalac, Manager of private respondent, from August 1967 to June 1978. This allegation was not assailed, denied or refuted by private respondent.
2. In a previous case (NCR Case No. AB-IV-12360-78) filed against private respondent for payment of holiday pay and 13th month pay under Presidential Decree No. 851, private respondent did not deny that petitioner was

entitled to the claim; it merely contested the amount to be paid, saying that petitioner "is entitled to the amount of P124.00 representing his legal holiday pay and P172.85 representing his 13th month pay." And, the fact is, petitioner was awarded holiday pay in the amount of P262.00 and 13th month pay in the amount of P643.64.

3. Article 281 of the Labor Code provides:

"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 of 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 proceeding 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." (Italics supplied)

As stated above, petitioner was in the employ of private respondent for 14 years.

4. If petitioner were employed as a "project employee" private respondent should have submitted a report of termination to the nearest public employment office every time his employment is terminated due to the completion of each construction project, as required by Policy Instruction No. 20 which provides:

"Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain a clearance from the Secretary of Labor in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes." (Italics supplied)

In all the 14 years that petitioner had been connected with the private respondent there should have been filed as many reports of termination as there were construction projects actually finished if it were true that petitioner Ochoco was only a project worker.

5. Finally, as aptly observed by the Solicitor General in his brief, "petitioner had all the time been drawing his salaries from respondent. Considering the length of time that petitioner had been connected with respondent, there is justification in concluding that petitioner had been engaged to perform activities which are usually necessary or desirable in the usual business of trade of his employer."

ACCORDINGLY, the Order dated January 28, 1980, of Deputy Minister Amado G. Inciong is SET ASIDE and private respondent Mañalac Construction Company is hereby ordered to reinstate petitioner to his former position, without loss of seniority and without deduction or qualification, to pay backwages equivalent to five (5) years and, likewise, to pay incentive leave pay.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Gutierrez, Jr., JJ., concur.

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