

**PAKISTAN INTERNATIONAL AIRLINES CORPORATION, PETITIONER,
VS. HON. BLAS F. OPLE, IN HIS CAPACITY AS MINISTER OF LABOR;
HON. VICENTE LEO-GRADO, JR., IN HIS CAPACITY AS DEPUTY MINI...**

G.R. No. 61594. September 28, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 2 December 1978, petitioner Pakistan International Airlines Corporation ("PIA"), a foreign corporation licensed to do business in the Philippines, executed in Manila two (2) separate contracts of employment, one with private respondent Ethelynne B. Farrales and the other with private respondent Ma. M.C. Mamasig.[1] The contracts, which became effective on 9 January 1979, provided in pertinent portion as follows:

"5. DURATION OF EMPLOYMENT AND PENALTY

This agreement is for a period of three (3) years, but can be extended by the mutual consent of the parties.

xxx xxx xxx

6. TERMINATION

xxx xxx xxx

Notwithstanding anything to contrary as herein provided, PIA reserves the right to terminate this agreement at any time by giving the EMPLOYEE notice in writing in advance one month before the intended termination or in lieu thereof, by paying the EMPLOYEE wages equivalent to one month's salary.

xxx xxx xxx

10. APPLICABLE LAW:

This agreement shall be construed and governed under and by the laws of Pakistan, and only the Courts of Karachi, Pakistan shall have the jurisdiction to consider any matter arising out of or under this agreement."

Respondents then commenced training in Pakistan. After their training period, they began discharging their job functions as flight attendants, with base station in Manila and flying assignments to different parts of the Middle East and Europe.

On 2 August 1980, roughly one (1) year and four (4) months prior to the expiration of the contracts of employment, PIA through Mr. Oscar Benares, counsel for and official of the local branch of PIA, sent separate letters both dated 1 August 1980 to private respondents Farrales and Mamasig advising both that their services as flight stewardesses would be terminated "effective 1 September 1980, conformably to clause 6 (b) of the employment agreement [they had] executed with [PIA]".[2]

On 9 September 1980, private respondents Farrales and Mamasig jointly instituted a complaint, docketed as NCR-STF-9-5151-80, for illegal dismissal and non-payment of company benefits and bonuses, against PIA with

the then Ministry of Labor and Employment (“MOLE”). After several unfruitful attempts at conciliation, the MOLE hearing officer Atty. Jose M. Pascual ordered the parties to submit their position papers and evidence supporting their respective positions. The PIA submitted its position paper,[3] but no evidence, and there claimed that both private respondents were habitual absentees; that both were in the habit of bringing in from abroad sizeable quantities of “personal effects”; and that PIA personnel at the Manila International Airport had been discreetly warned by customs officials to advise private respondents to discontinue that practice. PIA further claimed that the services of both private respondents were terminated pursuant to the provisions of the employment contract.

In his Order dated 22 January 1981, Regional Director Francisco L. Estrella ordered the reinstatement of private respondents with full backwages or, in the alternative, the payment to them of the amounts equivalent to their salaries for the remainder of the fixed three-year period of their employment contracts; the payment to private respondent Mamasig of an amount equivalent to the value of a round trip ticket Manila-USA-Manila; and payment of a bonus to each of the private respondents equivalent to their one-month salary.[4] The Order stated that private respondents had attained the status of regular employees after they had rendered more than a year of continued service; that the stipulation limiting the period of the employment contract to three (3) years was null and void as violative of the provisions of the Labor Code and its implementing rules and regulations on regular and casual employment; and that the dismissal, having been carried out without the requisite clearance from the MOLE, was illegal and entitled private respondents to reinstatement with full backwages.

On appeal, in an Order dated 12 August 1982, Hon. Vicente Leogardo, Jr., Deputy Minister, MOLE, adopted the findings of fact and conclusions of the Regional Director and affirmed the latter's award save for the portion thereof giving PIA the option, in lieu of reinstatement, “to pay each of the complainants [private respondents] their salaries corresponding to the unexpired portion of the contract[s] [of employment] x x x”.[5]

In the instant Petition for Certiorari, petitioner PIA assails the award of the Regional Director and the Order of the Deputy Minister as having been rendered without jurisdiction; for having been rendered without support in the evidence of record since, allegedly, no hearing was conducted by the hearing officer, Atty. Jose M. Pascual; and for having been issued in disregard and in violation of petitioner's rights under the employment contracts with private respondents.

1. Petitioner's first contention is that the Regional Director, MOLE, had no jurisdiction over the subject matter of the complaint initiated by private respondents for illegal dismissal, jurisdiction over the same being lodged in the Arbitration Branch of the National Labor Relations Commission (“NLRC”). It appears to us beyond dispute, however, that both at the time the complaint was initiated in September 1980 and at the time the Orders assailed were rendered on January 1981 (by Regional Director Francisco L. Estrella) and August 1982 (by Deputy Minister Vicente Leogardo, Jr.), the Regional Director had jurisdiction over termination cases.

Article 278 of the Labor Code, as it then existed, forbade the termination of the services of employees with at least one (1) year of service without prior clearance from the Department of Labor and Employment:

“Art. 278. Miscellaneous Provisions -- x x x

(b) With or without a collective agreement, no employer may shut down his establishment or dismiss or terminate the employment of employees with at least one year of service during the last two (2) years, whether such service is continuous or broken, without prior written authority issued in accordance with such rules and regulations as the Secretary may promulgate x x x” (Underscoring supplied)

Rule XIV, Book No. 5 of the Rules and Regulations Implementing the Labor Code, made clear that in case of a termination without the necessary clearance, the Regional Director was authorized to order the reinstatement of

the employee concerned and the payment of backwages; necessarily, therefore, the Regional Director must have been given jurisdiction over such termination cases:

"Section 2. Shutdown or dismissal without clearance. -- Any shutdown or dismissal without prior clearance shall be conclusively presumed to be termination of employment without a just cause. The Regional Director shall, in such case, order the immediate reinstatement of the employee and the payment of his wages from the time of the shutdown or dismissal until the time of reinstatement." (Underscoring supplied)

Policy Instruction No. 14 issued by the Secretary of Labor, dated 23 April 1976, was similarly very explicit about the jurisdiction of the Regional Director over termination of employment cases:

"Under PD 850, termination case -- with or without CBA -- are now placed under the original jurisdiction of the Regional Director. Preventive suspension cases, now made cognizable for the first time, are also placed under the Regional Director. Before PD 850, termination cases where there was a CBA were under the jurisdiction of the grievance machinery and voluntary arbitration, while termination cases where there was no CBA were under the jurisdiction of the Conciliation Section.

In more details, the major innovations introduced by PD 850 and its implementing rules and regulations with respect to termination and preventive suspension cases are:

1. The Regional Director is now required to rule on every application for clearance, whether there is opposition or not, within ten days from receipt thereof.

x x x x x x x x"

(Underscoring supplied)

2. The second contention of petitioner PIA is that, even if the Regional Director had jurisdiction, still his order was null and void because it had been issued in violation of petitioner's right to procedural due process.[6] This claim, however, cannot be given serious consideration. Petitioner was ordered by the Regional Director to submit not only its position paper but also such evidence in its favor as it might have. Petitioner opted to rely solely upon its position paper; we must assume it had no evidence to sustain its assertions. Thus, even if no formal or oral hearing was conducted, petitioner had ample opportunity to explain its side. Moreover, petitioner PIA was able to appeal his case to the Ministry of Labor and Employment.[7]

There is another reason why petitioner's claim of denial of due process must be rejected. At the time the complaint was filed by private respondents on 21 September 1980 and at the time the Regional Director issued his questioned order on 22 January 1981, applicable regulation, as noted above, specified that a "dismissal without prior clearance shall be conclusively presumed to be termination of employment without a just cause", and the Regional Director was required in such case to "order the immediate reinstatement of the employee and the payment of his wages from the time of the shutdown or dismissal until x x x reinstatement". In other words, under the then applicable rule, the Regional Director did not even have to require submission of position papers by the parties in view of the conclusive (juris et de jure) character of the presumption created by such applicable law and regulation. In *Cebu Institute of Technology v. Minister of Labor and Employment*, [8] the Court pointed out that "under Rule 14, Section 2, of the Implementing Rules and Regulations, the termination of [an employee] which was without previous clearance from the Ministry of Labor is conclusively presumed to be without [just] cause x x x [a presumption which] cannot be overturned by any contrary proof however strong".

3. In its third contention, petitioner PIA invokes paragraphs 5 and 6 of its contract of employment with private respondents Farrales and Mamasig, arguing that its relationship with them was governed by the provisions of its contract rather than by the general provisions of the Labor Code.[9]

Paragraph 5 of that contract set a term of three (3) years for that relationship, extendible by agreement between the parties; while paragraph 6 provided that, notwithstanding any other provision in the contract, PIA had the right to terminate the employment agreement at any time by giving one-month's notice to the employee or, in lieu of such notice, one-month's salary.

A contract freely entered into should, of course, be respected, as PIA argues, since a contract is the law between the parties.[10] The principle of party autonomy in contracts is not, however, an absolute principle. The rule in Article 1306, of our Civil Code is that the contracting parties may establish such stipulations as they may deem convenient "provided they are not contrary to law, morals, good customs, public order or public policy". Thus, counter-balancing the principle of autonomy of contracting parties is the equally general rule that provisions of applicable law, especially provisions relating to matters affected with public policy, are deemed written into the contract.[11] Put a little differently, the governing principle is that parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest. The law relating to labor and employment is clearly such an area and parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other. It is thus necessary to appraise the contractual provisions invoked by petitioner PIA in terms of their consistency with applicable Philippine law and regulations.

As noted earlier, both the Labor Arbiter and the Deputy Minister, MOLE, in effect held that paragraph 5 of that employment contract was inconsistent with Articles 280 and 281 of the Labor Code as they existed at the time the contract of employment was entered into, and hence refused to give effect to said paragraph 5. These Articles read as follows:

"Art. 280. Security of Tenure. -- In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time his reinstatement.

Article 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 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 as regular employee with respect to the activity in which he is employed and his employment shall continue which such actually exists." (Underscoring supplied)

In *Brent School, Inc., et al. v. Ronaldo Zamora, etc., et al.*, [12] the Court had occasion to examine in detail the question of whether employment for a fixed term has been outlawed under the above quoted provisions of the Labor Code. After an extensive examination of the history and development of Articles 280 and 281, the Court reached the conclusion that a contract providing for employment with a fixed period was not necessarily unlawful:

"There can of course be no quarrel with the proposition that where from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down or disregarded as contrary to public policy, morals, etc. But where no such intent to circumvent the law is shown, or stated otherwise, where the reason for the law does not exist, e.g., where it is indeed the employee himself who insists upon a period or where the nature of the engagement is such that, without being seasonal or

for a specific project, a definite date of termination is a sine qua non, would an agreement fixing a period be essentially evil or illicit, therefore anathema? Would such an agreement come within the scope of Article 280 which admittedly was enacted 'to prevent the circumvention of the right of the employee to be secured in * * (his) employment?

As it is evident from even only the three examples already given that Article 280 of the Labor Code, under a narrow and literal interpretation, not only fails to exhaust the gamut of employment contracts to which the lack of a fixed period would be an anomaly, but would also appear to restrict, without reasonable distinctions, the right of an employee to freely stipulate with his employer the duration of his engagement, it logically follows that such a literal interpretation should be eschewed or avoided. The law must be given reasonable interpretation, to preclude absurdity in its application. Outlawing the whole concept of term employment and subverting to boot the principle of freedom of contract to remedy the evil of employers' using it as a means to prevent their employees from obtaining security of tenure is like cutting off the nose to spite the face or, more relevantly, curing a headache by lopping off the head.

x x x x x x x x

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences." (Underscoring supplied)

It is apparent from Brent School that the critical consideration is the presence or absence of a substantial indication that the period specified in an employment agreement was designed to circumvent the security of tenure of regular employees which is provided for in Articles 280 and 281 of the Labor Code. This indication must ordinarily rest upon some aspect of the agreement other than the mere specification of a fixed term of the employment agreement, or upon evidence aliunde of the intent to evade.

Examining the provisions of paragraphs 5 and 6 of the employment agreement between petitioner PIA and private respondents, we consider that those provisions must be read together and when so read, the fixed period of three (3) years specified in paragraph 5 will be seen to have been effectively neutralized by the provisions of paragraph 6 of that agreement. Paragraph 6 in effect took back from the employee the fixed three (3)-year period ostensibly granted by paragraph 5 by rendering such period in effect a facultative one at the option of the employer PIA. For petitioner PIA claims to be authorized to shorten that term, at any time and for any cause satisfactory to itself, to a one-month period, or even less by simply paying the employee a month's salary. Because the net effect of paragraphs 5 and 6 of the agreement here involved is to render the employment of private respondents Farrales and Mamasig basically employment at the pleasure of petitioner PIA, the Court considers that paragraphs 5 and 6 were intended to prevent any security of tenure from accruing in favor of private respondents even during the limited period of three (3) years,[13] and thus to escape completely the thrust of Articles 280 and 281 of the Labor Code.

Petitioner PIA cannot take refuge in paragraph 10 of its employment agreement which specifies, firstly, the law of

Pakistan as the applicable law of the agreement and, secondly, lays the venue for settlement of any dispute arising out of or in connection with the agreement "only [in] courts of Karachi, Pakistan". The first clause of paragraph 10 cannot be invoked to prevent the application of Philippine labor laws and regulations to the subject matter of this case, i.e., the employer-employee relationship between petitioner PIA and Private respondents. We have already pointed out that that relationship is much affected with public interest and that the otherwise applicable Philippine laws and regulations cannot be rendered illusory by the parties agreeing upon some other law to govern their relationship. Neither may petitioner invoke the second clause of paragraph 10, specifying the Karachi courts as the sole venue for the settlement of disputes between the contracting parties. Even a cursory scrutiny of the relevant circumstances of this case will show the multiple and substantive contacts between Philippine law and Philippine courts, on the one hand, and the relationship between the parties, upon the other: the contract was not only executed in the Philippines, it was also performed here, at least partially; private respondents are Philippine citizens and residents, while petitioner, although a foreign corporation, is licensed to do business (and actually doing business) and hence resident in the Philippines; lastly, private respondents were based in the Philippines in between their assigned flights to the Middle East and Europe. All the above contacts point to the Philippine courts and administrative agencies as a proper forum for the resolution of contractual disputes between the parties. Under these circumstances, paragraph 10 of the employment agreement cannot be given effect so as to oust Philippine agencies and courts of the jurisdiction vested upon them by Philippine law. Finally, and in any event, the petitioner PIA did not undertake to plead and prove the contents of Pakistan law on the matter; it must therefore be presumed that the applicable provisions of the law of Pakistan are the same as the applicable provisions of Philippine law.[14]

We conclude that private respondents Farrales and Mamasig were illegally dismissed and that public respondent Deputy Minister, MOLE, had not committed any grave abuse of discretion nor any act without or in excess of jurisdiction in ordering their reinstatement with backwages. Private respondents are entitled to three (3) years backwages without qualification or deduction. Should their reinstatement to their former or other substantially equivalent positions not be feasible in view of the length of time which has gone by since their services were unlawfully terminated, petitioner should be required to pay separation pay to private respondents amounting to one (1) month's salary for every year of service rendered by them, including the three (3) years service putatively rendered.

ACCORDINGLY, the Petition for Certiorari is hereby DISMISSED for lack of merit, and the Order dated 12 August 1982 of public respondent is hereby AFFIRMED, except that (1) private respondents are entitled to three (3) years backwages, without deduction or qualification; and (2) should reinstatement of private respondents to their former positions or to substantially equivalent positions not be feasible, then petitioner shall, in lieu thereof, pay to private respondents separation pay amounting to one (1) - month's salary for every year of service actually rendered by them and for the three (3) years putative service by private respondents. The Temporary Restraining Order issued on 13 September 1982 is hereby LIFTED. Costs against petitioner.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 12 and 17.

[2] Id., p. 22.

[3] Id., pp. 36-41.

[4] Id., p. 43.

[5] Id., p. 64.

[6] Rollo, p. 6.

[7] See *Llora Motors, Inc., et al. v. Hon. Franklin Drilon, et al.*, G.R. No. 82895, 7 November 1989.

[8] 113 SCRA 257 (1982).

[9] Rollo, p. 8.

[10] *Henson v. Intermediate Appellate Court*, 148 SCRA 11 (1987).

[11] *Commissioner of Internal Revenue v. United Lines Co.*, 5 SCRA 175 (1962).

[12] G.R. No. L-48494, promulgated 5 February 1990.

[13] See *Biboso v. Victorias Milling Co., Inc.*, 76 SCRA 250 (1977).

[14] *Miciano v. Brimo*, 50 Phil. 867 (1924); *Collector of Internal Revenue v. Fisher*, 110 Phil. 686 (1961).

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