

**PHILIPPINE-SINGAPORE PORTS CORPORATION, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER
DANIEL M. LUCAS, JR., AND PERFECTO JARDIN, RESPONDENTS.**

G.R. No. 67035. January 29, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

This petition for certiorari with preliminary injunction and/or restraining order seeks to reverse and set aside: (a) the May 29, 1981 Resolution of the National Labor Relations Commission (NLRC) dismissing the appeal of the Philippine-Singapore Ports Corporation (PSPC) from the Decision of the Labor Arbiter dated January 3, 1980 ordering PSPC to pay Perfecto Jardin the sum of \$3,800.00 or its peso equivalent at the current rate of exchange representing the latter's wages for the un-expired portion of his employment contract, and (b) the February 9, 1984 Resolution of the NLRC en banc denying PSPC's motion for the reconsideration of its earlier Resolution.

The facts of the case are as follows:

PSPC is a corporation organized and existing under Philippine laws. On September 5, 1977, PSPC and Jardin entered into a contract of employment wherein the latter was employed by the former as a winchman/signalman at the Commercial Islamic Port of Jeddah in Saudi Arabia for a two-year period commencing in January, 1978. On or about October 18, 1978, the PSPC Medical Director recommended that Jardin be given priority in the schedule for rest and recreation (R and R) leave as he was diagnosed to be in need of a fistulectomy due to "fistula in anu."

Jardin was sent back to the Philippines at PSPC's expense for medical treatment. At the GSIS Hospital, Quezon City where he was treated and confined, his ailment was diagnosed as "pruritis ani due to ancylostomiasis." On November 4, 1978, Jardin was certified as fit to work by his attending physician at the said hospital. When he reported to the PSPC on the same day, however, he was advised to file his resignation papers.

Thus, on January 31, 1979, Jardin filed with the then Ministry of Labor, Region IV, Manila, a complaint for illegal dismissal and recovery of backwages (R4-STF-1-787-79). In its position paper, the PSPC prayed for the dismissal of the complaint principally on the ground that under Art. 15 of the Labor Code (P.D. No. 442), the Bureau of Employment Services and not the Labor Arbiter had jurisdiction over the case because it involved the overseas employment of a Filipino worker.

In his decision of January 3, 1980, Labor Arbiter Daniel M. Lucas, Jr. did not pass upon the issue of jurisdiction. He resolved the case on its merits and disposed of it as follows:

"WHEREFORE, respondent corporation is hereby ordered to pay complainant the sum of \$3,800.00 or, its equivalent in Peso, Philippine Currency, at the current rate of exchange, representing the latter's wages for the unexpired portion of his employment contract.

"SO ORDERED." (Rollo, p. 29).

In its appeal filed with the NLRC on February 19, 1980, PSPC reiterated its contention that it is the Bureau of Employment Services that has jurisdiction over the case and that, assuming that the Labor Arbiter had such jurisdiction, he gravely abused his discretion in finding that Jardin had been illegally dismissed even in the absence of evidentiary support thereon.

In the Resolution of May 29, 1981, the NLRC[1] dismissed the appeal on the sole ground that since Jardin had not been furnished with a copy of the appeal within the reglementary period of ten days, no appeal had been duly perfected by the PSPC.

PSPC filed a motion for reconsideration of said Resolution alleging that it had furnished Jardin with a copy of its memo-randum of appeal which was attached to its opposition to Jardin's motion for issuance of a writ of execution. The PSPC also stressed that the Bureau of Employment Services and not the arbitration section of the Ministry of Labor, had jurisdiction over the case. In the Resolution of February 9, 1984, the NLRC en banc[2] denied the motion for reconsideration and lifted the injunction it had issued in the case. Mentioning the fact that PSPC had repeatedly raised the issue of jurisdiction in all its previous cases without success, the NLRC held that the case fell "within the ambit of compulsory arbitration." The NLRC also ruled that PSPC's "belated service" of the appeal memorandum "did not cure the infirmity of the appeal" and therefore the PSPC failed to comply within the reglementary period with the mandatory requirements of an appeal (Rollo, pp. 59-60).

Hence, the instant petition for certiorari filed by PSPC asserting that the Labor Arbiter had no jurisdiction over the case and therefore the decision he had rendered is null and void, that the NLRC abused its discretion in dismissing the appeal on the technical ground of failure to furnish the adverse party with a copy of the appeal memorandum, and that, granting that the Labor Arbiter had jurisdiction over the case, he erred in finding that Jardin had been illegally dismissed.

The petition is impressed with merit.

When Jardin filed the complaint for illegal dismissal on January 31, 1979, Art. 217 (5) of the Labor Code provided that Labor Arbiters and the NLRC shall have "exclusive jurisdiction to hear and decide" all cases arising from employer-employee relations "unless expressly excluded by this Code." At that time, Art. 15 of the same Code had been amended by P.D. No. 1412 which took effect on June 9, 1978. The pertinent provision of the said presidential decree states:

"Article 15. Bureau of Employment Services. -

(a) x x x x x x

(b) The Bureau shall have the original and exclusive jurisdiction over all matters or cases involving employer-employee relations including money claims, arising out of or by virtue of any law or contracts involving Filipino workers for overseas employment, except seamen. The decisions of the Bureau shall be final and executory subject to appeal to the Secretary of Labor whose decisions shall be final and inappealable."

Considering that private respondent Jardin's claims undeniably arose out of an employer-employee relationship with petitioner PSPC and that private respondent worked overseas or in Saudi Arabia, the Bureau of Employment Services and not the Labor Arbiter had jurisdiction over the case. "Overseas employment" is defined by Art. 13(h) of the Labor Code as "employment of a worker outside the Philippines." Since the definition does not make a distinction regarding the nationality of the employer, Filipino employers who deploy their employees abroad should be deemed covered by the definition (See: *Philippine National Construction Corporation v. NLRC*, 193 SCRA 401 [1991]).

Art. 15 was further amended by P.D. No. 1691 which took effect on May 1, 1980. Such amendment qualified the

jurisdiction of the Bureau of Employment Services as follows:

"(b) The regional offices of the Ministry of Labor shall have the original and exclusive jurisdiction over all matters or cases involving employer-employee relations including money claims, arising out of or by virtue of any law or contracts involving Filipino workers for overseas employment except seamen: Provided, That the Bureau of Employment Services may, in the case of the National Capital Region, exercise such power, whenever the Minister of Labor deems it appropriate. The decisions of the regional offices or the Bureau of Employment Services if so authorized by the Minister of Labor as provided in this Article, shall be appealable to the National Labor Relations Commission upon the same grounds provided in Article 223 hereof. The decisions of the National Labor Relations Commission shall be final and inappealable."

Hence, as further amended, Art. 15 provided for concurrent jurisdiction between the regional offices of the then Ministry of Labor and the Bureau of Employment Services" in the case of the National Capital Region." It is noteworthy that P.D. No. 1691, while likewise amending Art. 217 of the Labor Code, did not alter the provision that Labor Arbiters shall have jurisdiction over all claims arising from employer-employee relations "unless expressly excluded by this Code."

The functions of the Bureau of Employment Services were subsequently assumed by the Philippine Overseas Employment Administration (POEA) on May 1, 1982 by virtue of Executive Order No. 797 by granting the POEA "original and exclusive jurisdiction over all cases, including money claims, involving employer-employee relations arising out of or by virtue of any law or contract involving Filipino workers for overseas employment, including seamen" (Sec. 4(a); *Eastern Shipping Lines v. Philippine Overseas Employment Administration [POEA]*, 200 SCRA 663 [1991]). This development showed the legislative authority's continuing intent to exclude from the Labor Arbiter's jurisdiction claims arising from overseas employment.

These amendments notwithstanding, when the complaint for illegal dismissal was filed on January 31, 1979, under Art. 15, as amended by P.D. No. 1412, it was the Bureau of Employment Services which had jurisdiction over the case and not the Labor Arbiters. It is a settled rule that jurisdiction is determined by the statute in force at the time of the commencement of the action (*Municipality of Sogod v. Rosal*, 201 SCRA 632, 637 [1991]). P.D. No. 1691 which gave the regional offices of the Ministry of Labor concurrent jurisdiction with the Bureau of Employment Services, was promulgated more than a year after the complaint was filed.

It is indubitable that at the time the Labor Arbiter took cognizance of the complaint for illegal dismissal, he was devoid of jurisdiction. Consequently, the decision promulgated by him is null and void having been rendered without jurisdiction and may be struck down any time - even on appeal to the Supreme Court (*Suarez v. Court of Appeals*, 186 SCRA 339 [1990]).

On the issue of whether or not the NLRC abused its discretion in dismissing the appeal on the technical ground of failure to furnish the adverse party with a copy of the appeal memorandum, the ruling of the Court in *Remerco Garments Manufacturing v. Minister of Labor and Employment* 135 SCRA 167, 178 [1985] 178) is squarely in point. The Court said therein:

"x x x. The mere failure to furnish copy of the appeal memorandum to adverse party is not a fatal defect. We have consistently adhered to the principle clearly held in *Alonso vs. Villamor* that 'technicality when it deserts its proper office as an aid to justice and become its great hindrance and chief enemy, deserves scant consideration from court.' In a more forceful language, Jr. Chief Justice Enrique M. Fernando, speaking for the Court, in *Meracap vs. International Ceramics Manufacturing Co., Inc.* stated that 'from the strictly juridical standpoint, it cannot be too strongly stressed, to follow Davis in his masterly work, *Discretionary Justice*, that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determinations, to quote from Bultmann, should be not

only *secundum retionem* but also *secundum caritatem*'. More recently, we held that in appeals in labor cases, non-service of the copy of the appeal or appeal memorandum to the adverse party is not a jurisdictional defect, and does not justify dismissal of the appeal. Likewise, it was held that dismissal of an employee's appeal on a purely technical ground is inconsistent with the constitutional mandate on protection to labor."

The NLRC therefore arbitrarily and despotically exercised its power by evading its positive duty to entertain the appeal on a purely technical ground. As the Court said in *Rapid Manpower Consultants, Inc. v. NLRC* 190 SCRA 747, 752 [1990]). "(t)echnicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties." In view of the clear lack of jurisdiction on the part of the Labor Arbiter over the complaint for illegal dismissal filed by private respondent, and the apparent abuse of discretion on the part of the NLRC in refusing to resolve petitioner's appeal, there is no reason to discuss the merits of the case.

WHEREFORE, the instant petition for certiorari is GRANTED and the proceedings below NULLIFIED but without prejudice to the right of private respondent Perfecto Jardin to refile with the Philippine Overseas Employment Administration his claim against the petitioner Philippine-Singapore Ports Authority.

SO ORDERED.

Gutierrez, Jr., (Chairman), Davide, Jr., Romero, and Melo, JJ., concur.

[1]The NLRC division was composed of Presiding Commissioner Guillermo C. Medina and Commissioners Gabriel M. Gatchalian and Miguel B. Varela.

[2]The NLRC was composed of Blas F. Ople as Chairman, Diego P. Atienza (who did not take part), Ricardo C. Castro, Geronimo Q. Quadra, Cecilio T. Seno, Cleto T. Villatuya, Federico O. Borromeo, Guillermo C. Medina, Gabriel M. Gatchalian and Miguel B. Varela.

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