

GREAT PACIFIC LIFE ASSURANCE CORPORATION, PETITIONER, VS. HONORATO JUDICO AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 73887, December 21, 1989

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a Petition for Certiorari to review the decision of the National Labor Relations Commission (NLRC, for brevity) dated September 9, 1985 reversing the decision of Labor Arbiter Vito J. Minoria, dated June 9, 1983, by 1) ordering petitioner insurance company, Great Pacific Life Assurance Corporation (Grepalife, for brevity) to recognize private respondent Honorato Judico, as its regular employee as defined under Art. 281 of the Labor Code and 2) remanding the case to its origin for the determination of private respondent Judico's money claims.

The records of the case show that Honorato Judico filed a complaint for illegal dismissal against Grepalife, a duly organized insurance firm, before the NLRC Regional Arbitration Branch No. VII, Cebu City on August 27, 1982. Said complaint prayed for award of money claims consisting of separation pay, unpaid salary and 13th month pay, refund of cash bond, moral and exemplary damages and attorney's fees.

Both parties appealed to the NLRC when a decision was rendered by the Labor Arbiter dismissing the complaint on the ground that the employer-employee relations did not exist between the parties but ordered Grepalife to pay complainant the sum of P1,000.00 by reason of Christian Charity.

On appeal, said decision was reversed by the NLRC ruling that complainant is a regular employee as defined under Art. 281 of the Labor Code and declaring the appeal of Grepalife questioning the legality of the payment of P1,000.00 to complainant moot and academic. Nevertheless, for the purpose of revoking the supersedeas bond of said company it ruled that the Labor Arbiter erred in awarding P1,000.00 to complainant in the absence of any legal or factual basis to support its payment.

Petitioner company moved to reconsider, which was denied, hence this petition for review raising four legal issues to wit:

I. Whether the relationship between insurance agents and their principal, the insurance company, is that of agent and principal to be governed by the Insurance Code and the Civil Code provisions on agency, or one of employer-employee, to be governed by the Labor Code.

II. Whether insurance agents are entitled to the employee benefits prescribed by the Labor Code.

III. Whether the public respondent NLRC has jurisdiction to take cognizance of a controversy between insurance agent and the insurance company, arising from their agency relations.

IV. Whether the public respondent acted correctly in setting aside the decision of Labor Arbiter Vito J. Minoria and in ordering the case remanded to said Labor Arbiter for further proceedings. (p. 159, Rollo)

The crux of these issues boil down to the question of whether or not employer-employee relationship existed between petitioner and private respondent.

Petitioner admits that on June 9, 1976, private respondent Judico entered into an agreement of agency with petitioner Grepalife to become a debit agent attached to the industrial life agency in Cebu City. Petitioner defines a debit agent as "an insurance agent selling/servicing industrial life plans and policy holders. Industrial life plans are those whose premiums are payable either daily, weekly or monthly and which are collectible by the debit agents at the home or any place designated by the policy holder" (p. 156, Rollo). Such admission is in line with the findings of public respondent that as such debit agent, private respondent Judico had definite work assignments including but not limited to collection of premiums from policy holders and selling insurance to prospective clients. Public respondent NLRC also found out that complainant was initially paid P200.00 as allowance for thirteen (13) weeks regardless of production and later a certain percentage denominated as sales reserve of his total collections but not lesser than P200.00. Sometime in September 1981, complainant was promoted to the position of Zone Supervisor and was given additional (supervisor's) allowance fixed at P110.00 per week. During the third week of November 1981, he was reverted to his former position as debit agent but, for unknown reasons, not paid so-called weekly sales reserve of at least P200.00. Finally on June 28, 1982, complainant was dismissed by way of termination of his agency contract.

Petitioner assails the findings of the NLRC that private respondent is an employee of the former. Petitioner argues that Judico's compensation was not based on any fixed number of hours he was required to devote to the service of petitioner company but rather it was the production or result of his efforts or his work that was being compensated and that the so-called allowance for the first thirteen weeks that Judico worked as debit agent, cannot be construed as salary but as a subsidy or a way of assistance for transportation and meal expenses of a new debit agent during the initial period of his training which was fixed for thirteen (13) weeks. Stated otherwise, petitioner contends that Judico's compensation, in the form of commissions and bonuses, was based on actual production, (insurance plans sold and premium collections).

Said contentions of petitioner are strongly rejected by private respondent. He maintains that he received a definite amount as his wage known as "sales reserve" the failure to maintain the same would bring him back to a beginner's employment with a fixed weekly wage of P200.00 regardless of production. He was assigned a definite place in the office to work on when he is not in the field; and in addition to canvassing and making regular reports, he was burdened with the job of collection and to make regular weekly report thereto for which an anemic performance would mean a dismissal. He earned out of his faithful and productive service, a promotion to Zone Supervisor with additional supervisor's allowance, (a definite or fixed amount of P110.00) that he was dismissed primarily because of anemic performance and not because of the termination of the contract of agency substantiate the fact that he was indeed an employee of the petitioner and not an insurance agent in the ordinary meaning of the term.

That private respondent Judico was an agent of the petitioner is unquestionable. But, as We have held in *Investment Planning Corp. vs. SSS*, 21 SCRA 294, an insurance company may have two classes of agents who sell its insurance policies: (1) salaried employees who keep definite hours and work under the control and supervision of the company; and (2) registered representatives who work on commission basis. The agents who belong to the second category are not required to report for work at anytime, they do not have to devote their time exclusively to or work solely for the company since the time and the effort they spend in their work depend entirely upon their own will and initiative; they are not required to account for their time nor submit a report of their activities; they shoulder their own selling expenses as well as transportation; and they are paid their commission based on a certain percentage of their sales. One salient point in the determination of

employer-employee relationship which cannot be easily ignored is the fact that the compensation that these agents on commission received is not paid by the insurance company but by the investor (or the person insured). After determining the commission earned by an agent on his sales the agent directly deducts it from the amount he received from the investor or the person insured and turns over to the insurance company the amount invested after such deduction is made. The test therefore is whether the "employer" controls or has reserved the right to control the "employee" not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished.

Applying the aforementioned test to the case at bar, We can readily see that the element of control by the petitioner on Judico was very much present. The record shows that petitioner Judico received a definite minimum amount per week as his wage known as "sales reserve" wherein the failure to maintain the same would bring him back to a beginner's employment with a fixed weekly wage of P200.00 for thirteen weeks regardless of production. He was assigned a definite place in the office to work on when he is not in the field; and in addition to his canvassing work he was burdened with the job of collection. In both cases he was required to make regular report to the company regarding this duties, and for which an anemic performance would mean a dismissal. Conversely faithful and productive service earned him a promotion to Zone Supervisor with additional supervisor's allowance, a definite amount of P110.00 aside from the regular P200.00 weekly "allowance". Furthermore, his contract of services with petitioner is not for a piece of work nor for a definite period.

On the other hand, an ordinary commission insurance agent works at his own volition or at his own leisure without fear of dismissal from the company and short of committing acts detrimental to the business interest of the company or against the latter, whether he produces or not is of no moment as his salary is based on his production, his anemic performance or even dead result does not become a ground for dismissal. Whereas, in private respondent's case, the undisputed facts show that he was controlled by petitioner insurance company not only as to the kind of work; the amount of results, the kind of performance but also the power of dismissal. Undoubtedly, private respondent, by nature of his position and work, had been a regular employee of petitioner and is therefore entitled to the protection of the law and could not just be terminated without valid and justifiable cause.

Premises considered, the appealed decision is hereby **AFFIRMED** in toto.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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