

**SKILLWORLD MANAGEMENT AND MARKETING CORPORATION,
SHARY LIMOUSINE, MR. SERAFIN RAMOS AND MRS. ALICIA RAMOS,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND
FRANCISCO R. ...**

G.R. No. 74412. June 13, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court. Petitioners seek to set aside the decision of public respondent National Labor Relations Commission (NLRC) in POEA Case No. (L)84-12-1068 and pray instead for the remand of the said case to the Philippine Overseas Employment Administration (POEA) for a re-hearing on the merits (p. 37, Rollo).

The facts are as follows:

On June 24, 1983, respondent Francisco R. Manuel was deployed to Saudi Arabia to work as driver by petitioner Skillworld Management and Marketing, a duly licensed recruitment agency operated by petitioners-spouses Serafin and Alicia Ramos. Upon his arrival in Jeddah, Manuel signed a two (2) year employment contract with his foreign employer, petitioner Shary Limousine for a monthly basic salary of three hundred U.S. dollars. Two (2) months later on August 24, 1983, respondent was repatriated to the Philippines. Upon his arrival in the Philippines, respondent Manuel confronted petitioners Serafin and Alicia Ramos who promised to deploy him to other projects (p. 44, Rollo).

After the lapse of more than one year without being deployed to other projects of petitioners, private respondent Manuel filed a complaint on January 5, 1985 with the POEA against petitioners for illegal dismissal (p. 45, Rollo). He alleged that while he was employed as driver of Shary Limousine in its branch at Jeddah he was stopped, and his driver's license sought for inspection, by Saudi Arabian police. He showed the police two documents given to him by his employer, Shary Limousine who made him believe that these pertained to a driver's temporary license. However, Manuel was informed that the documents were not valid for a driver's license. Together with eleven other drivers, they brought the matter before their superiors. Three days after bringing the matter to his superior, respondent was ordered to pack his things. He was taken to Riyadh and from there, repatriated to the Philippines. Upon respondent's arrival in the Philippines, he requested the Ministry of Foreign Affairs for a translation of what purported, to be his driver's license. When translated it was only a certification of employment with Shary Limousine in its branch at Jeddah.

In their answer, petitioners alleged that private respondent's dismissal was for a valid and just cause. Petitioners alleged that Manuel was dismissed because of disobedience, absenteeism, refusal to work and banding together to engage in concerted activities against the employer (pp. 41-42, Rollo). To support their contentions, petitioners submitted the affidavits of one Cholo Lopez, Administrative Manager of Shary Limousine, Felix Cariagu and Jaime Bautista, who both worked with private respondent at Shary Limousine.

On August 21, 1985, a decision (pp. 46-51, Rollo) was rendered by the POEA in favor of private respondent Manuel. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered directing respondent to pay complainant the amount of US \$6,900.00 or its equivalent in Philippine Currency at the time of actual payment covering complainant's salary for the unexpired portion of twenty three (23) months. Payment to be made thru this Office.

"SO ORDERED."

Petitioners' Motion for Reconsideration was treated as an appeal to public respondent NLRC. They questioned the factual findings of the POEA alleging that private respondent's allegations were not proven while its allegation that respondent's dismissal was for valid and serious grounds was sufficiently established by petitioners' witnesses. The NLRC dismissed the appeal and affirmed the decision of the POEA on April 28, 1986 (pp. 40-45, Rollo). On June 28, 1986, petitioners filed the instant petition for certiorari with this Court after two (2) motions for extensions of time to file petition, one dated May 10, 1986 (p. 2, Rollo) and the second dated May 22, 1986 (p. 6, Rollo).

On May 30, 1986, public respondent POEA issued a writ of execution which the petitioners opposed on June 11, 1986.

Meanwhile, on June 4, 1986, petitioners filed a Petition for Relief from Judgment (pp.97-101, Rollo) with public respondent POEA alleging for the first time their defense that under Saudi Arabian laws, certificates of employment coupled with a valid driver's license from one's country of origin were sufficient authority to drive motor vehicles for three months in Saudi Arabia. Petitioners also alleged that this fact was not presented nor substantiated during the proceedings in the POEA by their counsel of record despite their protestations and reminders. On June 18, 1986, the petition for relief from judgment and the opposition to the issuance of the writ of execution were denied for lack of merit. Public respondent POEA ruled therein that:

"x x x, the petition for relief cannot be granted.

"It is evident that parties were afforded the right to be heard and the opportunity to present evidence in their behalf. If respondents' counsel failed to present evidence during the proceedings, the omission cannot constitute the excusable neglect contemplated by law as would entitle respondent to relief from judgment.

"Furthermore, it is not also disputed that respondents availed of its right to appeal.

"Lastly, it must be observed that parties are entitled to a speedy determination of their claims.

"x x x." (p. 54, Rollo)

On July 3, 1986, We required the respondents to comment on the petition. We also issued a temporary restraining order on the same date enjoining respondents NLRC and POEA from enforcing or carrying out the August 25, 1985 decision of the POEA and the April 28, 1986 resolution of the NLRC (pp. 59-60, Rollo). The records show that before respondents had notice of the temporary restraining order, the cash bond of P50,000.00 filed by Skillworld Management and Marketing was already released to respondent Manuel on June 16, 1986 (p.164,Rollo).

On July 9, 1986, petitioner filed an amended petition (pp. 69-96, Rollo) and a Supplemental Petition on August 30, 1986. Private respondent filed his comment to the petition on July 11, 1986 (pp. 117-128, Rollo), adopted his comment to the petition as his comment to the amended petition and filed his comment to the Supplemental petition on October 7, 1986 (pp. 216-221, Rollo).

Petitioners contend that respondent NLRC committed grave abuse of discretion when it did not find that

respondent Manuel's dismissal was legal: a) because Manuel was under probationary employment at the time of his dismissal; and b) Manuel was guilty of the charges hurled against him by employer. It also faulted respondent POEA for denying petitioners' petition for relief from judgment where they raised the defense that no Arabian License is needed by private respondent Manuel to be able to drive in Saudi Arabia during the first three months of his stay.

According to petitioners, because of the probationary status of the employment of private respondent Manuel, he may be dismissed at any time. Furthermore, this agreement was contained in paragraph four (4) of the employment contract signed by Manuel, thus:

"The first three months of this contract will be considered as a probational period, during which, both parties are entitled to cancel the contract without any compensation." (p. 294, Rollo)

We do not agree with petitioners. While it may be true that Manuel was a probationary employee at the time of his dismissal he may not be dismissed without cause. This is settled in the cases of Manila Hotel Corporation v. NLRC and Renato L. Cruz, G.R. No. 53453, January 22, 1986 and in the case of Alga Moher international Placement Services v. Hon. D. Atienza, et al., G.R. Nos. 74610-11, September 30, 1988 where We held:

"There is no dispute that as a probationary employee, private respondent had but a limited tenure. Although on probationary basis, however, Cruz still enjoys the constitutional protection on security of tenure. During his tenure of employment therefore, or before his contract expires, respondent Cruz cannot be removed except for cause as provided for by law." (166 SCRA 174, 182)

The alleged causes for which private respondent was dismissed, viz: disobedience, absenteeism, refusal to work, and banding together to engage in a concerted activity against their employer and inciting other employees towards the commission thereof (p. 65, Rollo) were not established. Respondent NLRC found that:

"x x x

"A careful examination and evaluation of the records, however, will indicate that the questioned findings of the Administration are sufficiently supported by the evidence. Thus, the evidence is clear that the purported temporary licenses to drive issued to complainant and his co-drivers by their employer-the Shary Rent a Car/Limousine, turned out to be mere certifications to the effect that they are Filipino citizens who are holders of given passport numbers and that they were sent to work with the Shary Limousine Branch in Jeddah. It is precisely for this reason that after being accosted twice at checkpoints by Saudi police, who informed complainant and his co-drivers that the alleged temporary licenses were no (sic) good and not valid, they brought the matter first to their Lebanese superior and then to the Philippine Embassy. Further, contrary to respondents' claim that complainant failed to refute the testimony of their witnesses, records show that complainant, in his affidavit duly executed on 14 February 1985, averred, among others, that the accusations of respondents' witnesses namely, Cholo Lopez, Felix Cariaqa and Jaime Bautista are 'baseless, purely hearsay and could have emanated from a polluted source:' that the Allegation of Serafin R. Ramos (one of the respondents herein) that he and his companions were deployed for Al Shary Rent A Car after having complied with all the legal requirements, is not true, because as appearing in the Worker's Travel Exit Form which respondents submitted to the POEA, his foreign employer is Al Oufy Trading & Establishment of Saudi Arabia but he was actually assigned to work with the Al Shary Rent A Car; that the accusations against him by Cholo Lopez are purely hearsay and fabricated because Lopez was assigned and had been staying in Riyadh during his entire employment and he never met Lopez in Jeddah; that he reported for work regularly and even rendered regular overtime services; that he did not even attempt to join a strike or any other form of mass action while working in Jeddah, because he knew that the laws in Jeddah are (sic) very strict and being a foreigner he did not have the courage to join much less lead a strike which is prohibited there; that he and his co-workers merely inquired from the Philippine Embassy why they were allowed to drive without licenses; and

that their action prompted the Philippine Embassy to write their employer, which is perfectly in order as it was designed to protect them in foreign soil." (pp. 65-66, Rollo)

"It is a well settled principle that findings of facts (of) quasi-judicial agencies like the NLRC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence." (Manila Mandarin Employees Union v. NLRC, G.R. No. 76989, September 29, 1987, 154 SCRA 368; Akay Printing Press v. Minister of Labor and Employment, et al., G.R. No. 59651, December 6, 1985, 140 SCRA 381; Alba Patio de Makati, et al. v. Alba Patio de Makati Employees Association, et al., G.R. No. L-37922, March 16, 1984, 128 SCRA 253; Dela Concepcion, et al. v. National Labor Relations Commission, G.R. No. 57078, February 20, 1984, 127 SCRA 647; Dangan v. National Labor Relations Commission, et al., G.R. Nos. 63127-28, February 20, 1984, 127 SCRA 706).

Finally, petitioners contend that public respondent POEA committed abuse of discretion when it denied their petition for relief from judgment where they raised the defense that Saudi Arabia follows the internationally accepted custom and practice of allowing foreigners with a valid license from their respective country to drive in the host country without need of securing a Saudi Arabian License for a period of three (3) months.

It is noted that petitioners did not allege in their answer the defense that under Saudi Arabian Law, a certificate of employment and a driver's license issued by one's country of origin are sufficient authority to drive motor vehicles in Saudi Arabia. Neither was such defense raised in their appeal. It was raised only in a petition for relief from judgment filed more than a month after the NLRC rendered its decision on the appeal from the POEA decision to belie the established fact that private respondent Manuel was dismissed because of his insistence that his employer secure for him a Saudi Arabian license. This defense could have been presented at the first instance during the proceedings before the POEA or at the latest, on appeal to the NLRC. Petitioner's failure to do so demonstrates that this defense was only an afterthought. We cannot also sympathize with petitioners' claim that they allegedly brought this matter up with their counsel but that the latter failed and refused to bring it up before the POEA. The case was heard on several occasions before the POE but the defense was never brought up. Neither was it presented in their motion for reconsideration treated as an appeal.

It is true that technical rules are not binding in labor cases, but the application of this rule is restricted by Article 221 of the Labor Code which provides:

"Art. 221. Technical rules not binding. In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. x x x"

It is not the intention of the makers of this law to allow the parties to change their theory at any stage of the proceedings, more so when the allegations of facts had already been established at the POEA and NLRC level. To order the remand of this case to the POEA for the purpose of re-hearing would unduly delay its termination to the prejudice of private respondent Manuel who has the right to a speedy determination of his case. In the absence of any showing that petitioners were deprived of their right to due process, no grave abuse of discretion can be concluded from the refusal of respondent POEA to grant petitioners' petition for relief from judgment on the basis of a newly raised defense.

ACCORDINGLY, finding no grave abuse on the part of public respondent in issuing the questioned resolution, the petition is DISMISSED. The decision of POEA dated August 21, 1985 and the resolution of the NLRC dated

April 28, 1986 are hereby affirmed. The temporary restraining order issued on July 3, 1986 is hereby lifted. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Gancayco, JJ., concur.
Grino-Aquino, J., on leave.

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