

TELESFORO MAGANTE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND CONSTRESS PHILIPPINES, INC., RESPONDENTS.

G.R. No. 74969, May 07, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The issue in this petition for certiorari is whether public respondent National Labor Relations Commission committed grave abuse of discretion in reversing and setting aside the decision of Labor Arbiter Domingo V. del Rosario dated June 22, 1983 directing private respondent in Case No. NLRC-NCR- 8-5215-82 entitled "Telesforo Magante, complainant, vs. Constress Philippines, Inc., respondent" to reinstate petitioner to his position with full backwages with all the rights and benefits granted by law. In lieu of the aforesaid decision, public respondent commission entered a new judgment dismissing petitioner's complaint for illegal dismissal on the ground that said petitioner is a project employee whose employment terminated upon the completion of the project to which he was assigned.[1]

The undisputed facts of the case as culled from the records of the case are:

Private respondent Constress Philippines, Inc. is engaged in the concrete structural business with address at Ortigas Avenue, Pasig, Metro Manila. Petitioner Telesforo Magante, on the other hand, was employed by the former as a carpenter from April 17, 1980 until his dismissal on March 6, 1982 earning three hundred pesos (P300.00), more or less, a week excluding allowance and rendering about fourteen (14) hours of work daily from 7:00 in the morning to 10:00 in the evening. His work involved the making of molds (forma or siding of cement post) for bridges, buildings, charcoal guildler, sea file, and others. Apparently, petitioner was never assigned to work outside the plant of private respondent.

Every three (3) months, petitioner was made to fill up and sign an employment contract relating to a particular phase of work in a specific project. Allegedly, the terms of the contract written in English were not understood by petitioner nor was the same explained to him. The last hiring agreement entered into between petitioner and private respondent was on December 7, 1981 which was to take effect on even date with an agreed compensation of P21.36 a day.

On March 6, 1982, private respondent posted a notice of termination on its bulletin board to take effect the following day, March 7, 1989, which included petitioner and other employees as among those whose services were being terminated by private respondent. Petitioner was told that he cannot work anymore because he is already old, that his contract had already expired and was not renewed being a project employee. The termination of petitioner and his fellow workers was reported to the Ministry of Labor.

Consequently, petitioner filed a complaint with the then Ministry (now Department) of Labor and Employment for illegal dismissal. After the filing of the respective position papers by the parties, Labor Arbiter Domingo del Rosario rendered a decision[2] on June 22, 1983 with the following pronouncement:

"The terms of the contract that complainant is a project worker is not the determining factor of the status of complainant or any worker but the work performed by him and the place where he performed his assignment. The contract entered into by respondent and complainant is more of a scheme to evade its liability or obligation under the law.

WHEREFORE, respondent is directed to reinstate complainant to his position with full backwages with all the rights and benefits granted by law and by respondent Company."[3]

From the foregoing decision of the labor arbiter, private respondent filed an appeal before the National Labor Relations Commission premised on the ground that the termination of petitioner's employment was occasioned by the completion of the phase of work in the project for which he was specifically hired and that he was duly notified thereof in compliance with the requirements of law.

Finding merit in the appeal, public respondent held that petitioner's employment falls squarely within the purview of Policy Instructions No. 20, a regulation intended for stabilizing employer-employee relations in the construction industry which has aptly taken into consideration the unique characteristics of respondent's business herein, quoting the pertinent provisions as follows:

"Generally, there are two types of employees in the construction industry namely:

- 1) Project employees, and
- 2) Non-project employees

"Project employees are those employed in connection with a particular construction project. x x x

"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."[4]

Public respondent further found that upon completion of particular phase of work in the project for which petitioner's services have been hired, his termination was indubitably for cause. With these justifications, public respondent set aside the appealed decision of the labor arbiter and entered a new judgment dismissing the complaint for lack of merit. Petitioner filed a motion for reconsideration of the aforesaid decision but the same was denied.

Petitioner now comes before Us by way of certiorari to set aside the aforesaid decision of public respondent promulgated on August 1, 1984 for having been issued with grave abuse of discretion. It is asserted in the instant petition that private respondent's argument that petitioner was only hired for a fixed period of time cannot escape the factual finding of the Labor Arbiter's decision that the contract entered into by private respondent with the petitioner is more of a scheme to evade its liability or obligation under the law by making it appear that said petitioner is a project to project employee.

The Solicitor-General, when required to file a Comment to the instant petition, took the same stand as petitioner citing the case of *Fegurin, et al. vs. National Labor Relations Commission, et al.*[5] as the basis for considering petitioner as a regular and permanent employee who should therefore be reinstated to his position with backwages.[6]

In view of the Solicitor-General's contrary stand to the decision of public respondent National Labor Relations Commission, the latter was given an opportunity to file its own comment to the petition. In the aforesaid comment, public respondent defends its decision in line with Article 281 of the Labor Code which provides the exception to regular and casual employment, that is, when 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 employment. Public respondent contends that petitioner's case falls within the exception and the Fegurin case relied upon by petitioner does not stand on all fours with the present case because the complainants in said case had lengths of service for nine (9), eight (8) and six (6) years, the shortest being three (3) years. In the instant case, petitioner worked only for over a year, his last contract lasting only a span of four (4) months. Furthermore, Article 281 of the Labor Code is intended for all industries except the construction industry. Precisely, Policy Instruction No. 20 was promulgated for the reason that problems of regularity of employment in the construction industry has continued to plague it. This policy merely implements the exception to Article 281 of the Labor Code.[7]

We find merit in the petition as We sustain the position of the Solicitor-General that petitioner Telesforo Magante was a regular employee of private respondent.

Article 281 of the Labor Code provides:

"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 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 preceding 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."

As aptly observed by the Solicitor-General, petitioner has established that since the very inception of his employment in 1980, he was never deployed from project to project of private respondent but had been regularly assigned to perform carpentry work under the supervision of a certain Bernardo Padaon who, since 1964 until his resignation on January 2, 1982 worked for private respondent as the supervisor of its Carpentry Department. This goes to show two things: that petitioner was assigned to perform tasks which are usually necessary or desirable in the usual business or trade of private respondent; and that said assignments did not end on a project to project basis, although the contrary was made to appear by private respondent through the signing of separate employment contracts allegedly for different projects because it is indeed obvious that petitioner continued to perform the same kind of work throughout his period of employment allegedly considered to have been done on a project to project basis.

Although petitioner had only rendered almost two years of service, nevertheless this should not detract from his status of being a regular employee because as correctly stated by the labor arbiter, the determining factor of the status of complainant-petitioner or any worker is the nature of the work performed by the latter and the place where he performed his assignment.

We have re-examined the case of Fegurin vs. National Labor Relations Commission[8] and found that although the facts of the said case are not on all fours with the instant petition there being a work pool to which the complaining employees therein belonged, nonetheless, the doctrine therein may be similarly applied in the case at bar considering that the nature of the work of petitioner herein and in said case also involved carpentry work and there was a continuous assignment of similar workload from project to project.

We held therein that the employment of petitioners with the company for several years [four (4) of whom for nine (9) years, one (1) for eight (8) years, another for six (6) years, the shortest term being three (3) years] despite the shorter employment periods specified in their notices of employment, performing activities usually necessary or desirable in the usual business of the company, shows that they are regular employees.

Moreover, 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.[9] 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)

Throughout the duration of petitioner's employment, there should have been filed as many reports of termination as there were construction projects actually finished if it were true that petitioner Telesforo Magante was only a project worker.

The foregoing considered, public respondent National Labor Relations Commission gravely abused its discretion in closing its eyes to the evidence on record and the factual findings of the labor arbiter in setting aside the decision of the latter. Construing the employment contract signed by petitioner with private respondent solely on its face without considering the surrounding circumstances in this case serves to defeat the purpose for which the Labor Code and its implementing rules were enacted.

WHEREFORE, the petition for certiorari is granted, and the decision of the National Labor Relations Commission, dated August 1, 1984 is hereby REVERSED and SET ASIDE and the decision of the Labor Arbiter dated June 22, 1983 is hereby AFFIRMED and REINSTATED.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 25-28.

[2] Rollo, pp. 16-18.

[3] Decision, Rollo, p. 18.

[4] Underscoring supplied, Rollo, p. 27.

[5] 120 SCRA 910.

[6] Rollo, pp. 44-52.

[7] Rollo, pp. 60-64.

[8] Supra.

[9] Ochoco vs. National Labor Relations Commission, 120 SCRA 774.

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