

LAND AND HOUSING DEVELOPMENT CORP. AND AMERAD BETONG VAGFORBATTINGER (ABV), PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION A...

G.R. No. 75927. October 05, 1988

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking the annulment of the Resolution of the respondent National Labor Relations Commission dated August 15, 1986 (p. 14, Rollo) in POEA Case No. 84-11-974 entitled, "EDUARDO A. YABUT, Complainant, versus LAND AND HOUSING DEVELOPMENT CORPORATION (LHDC) and AMERAD BETONG VAGFORBATTINGER (ABV), Respondents", affirming the decision of the Philippine Overseas Employment Administration (POEA) awarding separation pay and attorney's fees to the herein private respondent Eduardo A. Yabut.

The antecedent facts are as follows:

Private respondent Yabut was engaged by the Amerad Betong Vagforbattinger (ABV for short) through the Land and Housing Development Corporation (LHDC for short) as a camp administrator/personnel coordinator in its project in Libya. The original contract started on March 3, 1981. Thereafter, respondent Yabut's contract was extended thrice until his services were terminated on September 15, 1984. He was paid the following: salaries up to September 21, 1984; one month's pay in lieu of notice and the pro-rata portion of his bonus.

On November 6, 1984, respondent Yabut filed a complaint for illegal dismissal, recovery of damages, unpaid bonus and separation pay against the LHDC and its foreign principal, the ABV, with the Philippine Overseas Employment Administration.

On December 7, 1984, the petitioners LHDC and ABV filed their answer and alleged that respondent Yabut was not illegally dismissed but was separated from the service due to the completion of their project; and that their "Overseas Employment Agreement" does not provide for payment of indemnity or separation pay in case of termination.

On October 1, 1985, the POEA rendered a decision (pp. 16-19, Rollo) which stated, inter alia:

"x x x We are inclined to find merit in respondents' contention that they were forced to retrench workers because of reduced work activities and/or fewer job orders, a development which was, in fact, fortuitous. Furthermore, judicial notice may be taken of the fact the construction contractors like the respondent LHDC have had to resort to retrenchment of workers because of grave financial and other difficulties. x x x

"x x x x x x x x x x

"This Office finds merit, however, in complainant's claim for separation pay. While it is true that, as pointed out by respondents, there is no provision for indemnity or separation pay in case of termination in both the

"Overseas Employment Agreement" and the Memorandum of Agreement", paragraph 14 of the former provides that the same shall be governed and construed in accordance with the Philippine Laws. Article 284 of the Labor Code provides for the payment of separation pay in case of retrenchment in an amount of equivalent to one month pay or at least one-half month pay for every year of service, whichever is higher. x x x

x x x x x x x x

"WHEREFORE, judgment is hereby rendered in favor of the complainant and against the respondents, ordering the latter, jointly and severally, to pay complainants:

"1. FOUR THOUSAND FIVE HUNDRED U.S. DOLLARS (U.S. \$4,500.00) or its equivalent at the time of actual payment, representing complainant's separation pay;

"2. Ten percent (10%) of the above-mentioned amount as and for attorney's fees.

"Complainant's claim for damages and unpaid bonus are hereby dismissed for lack of merit.

"SO ORDERED."

Petitioners appealed from the adverse decision to the respondent Commissions. On August 15, 1986, respondent Commission dismissed the appeal for lack of merit and affirmed in toto the decision of the POEA.

On September 24, 1986, the instant petition was filed with the petitioners contending that respondent Commission committed grave abuse of discretion in affirming the decision of the POEA. A temporary restraining order was issued by this Court on September 29, 1986, enjoining the respondents from enforcing the questioned resolution of the respondent Commission.

The two issues to be resolved in the instant case are: (1) whether or not respondent Yabut was a regular employee of the petitioners; (2) whether or not the respondent Yabut is entitled to separation pay considering that his dismissal was due to a just cause.

Petitioners contend that respondent Yabut was merely an employee for a specific project so that he cannot be considered a regular employee. They further argue that overseas construction workers, like respondent Yabut, are hired on a contractual basis, the period of which lasts no longer than one (1) year per contract, unless renewed each time the period expires, until the completion of the particular project.

Article 280 (formerly Article 281) of the Labor Code, as amended, provides:

"Art. 280. 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 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 employee 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 which he is employed and his employment shall continue while such actually exists."

It may be well to cite also at this point Policy Instructions No. 12 of the Minister of Labor which provides:

"PD 950 has defined the concept of regular and casual employment. What determined regularity or casualness is not the employment contract written or otherwise, but the nature of the job. If the job is usually necessary or

desirable to the main business of the employer, then employment is regulars. x x x."

Petitioner admitted that respondent Yabut was employed in their company as Camp Administrator before he was dismissed on September 21, 1984. The record is also clear to the effect that respondent Yabut had been in the employ of the petitioners' company for four (4) years before his services were terminated. There can be no question, therefore, that respondent Yabut was a regular employee. It is worthy to note that in the recent case of Erectors Incorporated vs. National Labor Relations Commission, et. al., G.R. No. 79174, June 29, 1988, We already ruled that an overseas contract worker such as one assigned as a senior project manager in Saudi Arabia, who has rendered more than one (1) year of service at the time he was terminated, is by express provision of law considered a regular employee.

Furthermore, considering the length of time that respondent Yabut had been employed by the petitioners, there is justification in concluding that the former was engaged to perform activities which are usually necessary or desirable in the usual business or trade of his employer (Ochoco vs. National Labor Relations Commission, No. L-56363, February 24, 1983, 120 SCRA 774).

As earlier stated, the POEA found that respondent Yabut was separated from the service due to retrenchment and this matter was affirmed by the respondent Commission. We find no reason to disturb this finding. As a consequence, aforesaid respondent is entitled to separation pay pursuant to Article 283 (formerly Article 284) of the Labor Code which provides:

"Art. 283. Closure of establishment and reduction of personnel. - x x x In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year."

The findings of the POEA and the respondent Commission that the respondent Yabut is entitled to separation pay in the amount of US \$4,500.00 bear great weight. Well-established is the principle that findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality. Judicial review by this Court on labor cases does not go so far as to evaluate the sufficiency of the evidence upon which the proper labor officer or office based his or its determination but are limited to issues of jurisdiction or grave abuse of discretion (Special Events and Central Shipping Office Workers Union vs. San Miguel Corporation, Nos. L-51002-06, May 30, 1983, 122 SCRA 557). In the instant case, the assailed Resolution of the respondent Commission and Decision of the POEA are not tainted with arbitrariness that would amount to grave abuse of discretion or lack of jurisdiction and, therefore, We find no reason to disturb the same.

ACCORDINGLY, premises considered, the instant petition is dismissed for lack of merit. The temporary restraining order issued on September 29, 1986 is lifted.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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