

ERECTORS INCORPORATED, PETITIONER VS. NATIONAL LABOR RELATIONS COMMISSION, FIRST DIVISION COMPOSED OF THE HON. CONRADO B. MAGLAYA, HON. EDNA BONTO-PEREZ, HON. ROSARIO G. ENCARNA...*G.R. No. 79174. June 29, 1988*

Ponente: CORTES, J.

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The instant case revolves around the claims of an overseas contract worker who, after the termination of his overseas contract, was absorbed by his employer in its operations in the Philippines and after four (4) months was again terminated. As in all cases of termination, the issue is one of its legality.

In an undated "Overseas Employment Contract," which private respondent allegedly signed on July 2, 1979, the latter was appointed by petitioner as Senior Project Manager in its Buraidah Sports Complex Project in Saudi Arabia with a monthly basic salary of \$1,150.00 and allowance of \$1,150.00. The contract provided that it was to commence upon the departure of private respondent from the Philippines and shall be effective for the duration of the project, with the reservation that it may be terminated by-petitioner at an earlier date if called for by "manpower requirements" [Rollo, p. 37].

However, prior to his deployment in Saudi Arabia private respondent was assigned to petitioner's local projects from August 16, 1979 until October 3, 1979 in order to familiarize him with its operations.

On October 3, 1979, private respondent finally left for Saudi Arabia, arriving therein on October 5, 1979. However, apparently with his consent, he was instead assigned to petitioner's King Khalid Military City Project. After he had worked in Saudi Arabia for six (6) months, he returned to the Philippines for a fifteen (15) day paid vacation scheduled from April 8 to 24, 1980, as provided in his contract. Upon the expiration of his vacation leave, he reported to petitioner and expressed his readiness to return to his assignment in Saudi Arabia. Without any warning he was verbally informed that his contract had been terminated because his services were no longer needed in petitioner's projects in Saudi Arabia. Belatedly, he was officially informed in a letter dated May 19, 1980 [Rollo, p. 47] that his employment pursuant to the overseas contract had been terminated as of April 24, 1980. As a result of private respondent's protestations, an arrangement whereby he would be retained by petitioner was made. Thus, he was prevailed upon by petitioner's officers to accept a new appointment in its local operations with the promise that he would be given foreign assignments in the future. This new appointment as Project Manager carried with it the lower salary of P5,000.00 a month retroactive to April 24, 1980. However, petitioner and private respondent's compromise arrangement was short-lived because on August 30, 1980, the services of the latter were terminated by petitioner.

On the next day, private respondent filed a complaint for illegal dismissal with the Philippine Overseas Employment Administration (POEA) citing as basis his overseas contract. The POEA dismissed the complaint for lack of merit, noting that even if private respondent had a cause of action, such would be based on his local

employment, thus rendering the POEA without jurisdiction since such was within the exclusive jurisdiction of the Labor Arbiters.

On appeal, the National Labor Relations Commission (NLRC) set aside the decision of the POEA and ordered petitioner to pay private respondent the sum of US \$11,500.00, his salary for the unexpired term of the overseas contract, and the latter's lawyer P23,000.00 as attorney's fees.

Aggrieved, petitioner filed the instant petition for certiorari with a prayer for preliminary injunction and/or restraining order alleging grave abuse of discretion on the part of respondent NLRC. On August 5, 1987, the Court issued the temporary restraining order prayed for.

At the heart of the controversy is the validity of private respondent's dismissal. In essence, petitioner contends that it may dismiss private respondent for "lack of an available position and negative attitude towards work assignments" [Petition, p. 14; Rollo, p. 15] since he was still a probationary employee when he was dismissed, his latest appointment having provided for a six-month probationary period. Thus, the notice of dismissal dated August 26, 1980 simply stated:

This is to inform you that your probationary employment with the Company is terminated effective after the close of office hours, 30 August 1980.

You are, therefore, to accomplish the attached clearance form as required. [Rollo, p. 50].

Private respondent contends otherwise, claiming that as he had rendered service for more than a year, he was undoubtedly a regular employee and, hence, may only be dismissed for cause as provided by law.

The court finds private respondent's contention more in accord with the law. It will be recalled that he effectively commenced his employment with petitioner on August 16, 1979, when he was assigned to petitioner's local projects preparatory to his deployment in Saudi Arabia, and was in petitioner's employ continuously until August 30, 1980, when he was terminated after he had been extended a new appointment as project manager in petitioner's local projects, for a total employment period of one (1) year and fifteen (15) days.

Petitioner contends that private respondent's employment with petitioner was not continuous, it being divisible between his employment pursuant to the overseas contract and his employment pursuant to his new appointment on April 24, 1980 and, therefore, private respondent cannot be said to have attained the status of a regular employee.

The Labor Code, however, erases all doubts as to the nature of private respondent's employment:

Art. 281. Regular and Casual Employment. — The provisions of written agreements 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 services 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. [Italics supplied.]

As private respondent has rendered more than one (1) year of service as a project manager at the time he was

terminated on August 30, 1980, his employment having effectively commenced on August 16, 1979, he is by express provision of law considered a regular employee, notwithstanding his deployment in Saudi Arabia for some six (6) months under the overseas contract. For purposes of determining the nature of private respondent's employment, his deployment in Saudi Arabia amounts to a foreign assignment, not a separate and distinct employment, considering that he had effectively commenced his employment with petitioner of August 16, 1979 when he was assigned to petitioner's local projects preparatory to his assignment in Saudi Arabia and that he had been continuously in its employ until he was terminated on August 30, 1980. Significantly, there was not even an interregnum between the overseas and local appointments as the latter was made retroactive to April 24, 1980, the date the overseas contract was unilaterally terminated by petitioner. This circumstance cannot but be appreciated as an indication of an intent to afford private respondent the continuity of his employment in view of the early termination of his overseas contract.

Thus, being a regular employee, private respondent may not be dismissed except for a valid cause as provided by law. In the instant case, no valid cause for termination has been cited by petitioner in the notice to private respondent, as all along it had acted on the theory that it had greater leeway in terminating private respondent since his appointment was probationary.

Clearly, private respondent's termination was illegal.

The Court, however, cannot subscribe to respondent NLRC's view that private respondent should be paid the amounts accruing to him under the overseas contract. As correctly pointed out by the POEA, the overseas contract was deemed superseded by private respondent's new appointment to which he voluntarily expressed his conformity in writing. Thus, effective April 24, 1980, any right or benefit accruing to private respondent by virtue of his employment with petitioner would have as its basis his new appointment and not the overseas contract which has ceased to govern their employer-employee relations.

The Court is not unmindful of the fact that, as again correctly stated by the POEA, since private respondent's cause of action rests upon his latest local appointment, and not the overseas contract, jurisdiction lies with the Labor Arbiters. The dismissal of the case, without prejudice to its refiling, would therefore appear to be the appropriate disposition. However, considering that in any event the final disposition of the case rests upon this Court and there is no material question of fact to be resolved, the Court deems it in the best interest of justice and in full fealty to the constitutional mandate to afford protection to labor to avoid protracted litigation and to rule with finality on private respondent's complaint for illegal dismissal.

WHEREFORE, in view of the foregoing, the decision of the NLRC is SET ASIDE and petitioner is ordered to reinstate private respondent without loss of seniority rights, with backwages for three (3) years computed on the basis of his latest salary, without qualification or deduction. Should reinstatement not be possible, petitioner is ordered to pay private respondent separation pay as provided by law.

The temporary restraining order issued by the Court on August 5, 1987 is hereby LIFTED.

SO ORDERED.

Fernan, Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., on leave.

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