

**FINMAN GENERAL ASSURANCE CORPORATION, PETITIONER, VS.
ABDULGANI SALIK, BALABAGAN AMPILAN, ALI KUBA, GANDHI PUA,
DAUD MALANAO, THE ADMINISTRATOR, PHILIPPINE OVERSEAS
AND EMPLOYME...**

G.R. No. 84084. August 20, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari seeking to annul 1) the Order dated March 18, 1988 of the Honorable Secretary of Labor and Employment in POEA, LRO/RRD Case No. 87-09-1022-DP entitled Abdulgani Salik, et al. v. Pan Pacific Overseas and Recruiting Services and Finman General Assurance Corporation, which directed herein petitioner to pay jointly and severally with Pan Pacific the claims of herein private respondents amounting to P25,000.00 and 2) the Order dated June 7, 1988, which denied petitioner's motion for reconsideration (Rollo, p. 2).

The facts of the case are as follows:

Abdulgani Salik et al., private respondents, allegedly applied with Pan Pacific Overseas Recruiting Services, Inc. (hereinafter referred to as Pan Pacific) on April 22, 1987 and were assured employment abroad by a certain Mrs. Normita Egil. In consideration thereof, they allegedly paid fees totalling P30,000.00. But despite numerous assurances of employment abroad given by Celia Arandia and Mrs. Egil, they were not employed (Ibid., p. 15).

Accordingly, they filed a joint complaint with the Philippine Overseas Employment Administration (herein referred to as POEA) against Pan Pacific for Violation of Articles 32 and 34(a) of the Labor Code, as amended, with claims for refund of a total amount of P30,000.00 (Ibid.).

The POEA motu proprio impleaded and summoned herein petitioner surety Finman General Assurance Corporation (hereinafter referred to as Finman), in the latter's capacity as Pan Pacific's bonding company.

Summons were served upon both Pan Pacific and Finman, but they failed to answer.

On October 9, 1987, a hearing was called, but only the private respondents appeared. Despite being deemed in default for failing to answer, both Finman and Pan Pacific were still notified of the scheduled hearing. Again they failed to appear. Thus, ex-parte proceedings ensued.

During the hearing, herein private respondents reiterated the allegations in their complaint that they first paid P20,000.00 thru Hadji Usop Kabagani for which a receipt was issued signed by Engineer Arandia and countersigned by Mrs. Egil and a certain Imelda who are allegedly employed by Pan Pacific; that they paid another P10,000.00 to Engr. Arandia who did not issue any receipt therefor; that the total payment of P30,000.00 allegedly represents payments for herein private respondents in the amount of P5,000.00 each, and Abdunnasser Ali, who did not file any complaint against Pan Pacific (Ibid., pp. 15-16).

Herein private respondents presented as their witness, Hadji Usop Kabagani who they identified as the one who actually financed their application and who corroborated their testimonies on all material points including the non-issuance of a receipt for P10,000.00 by Engr. Arandia.

Herein petitioner, Finman, in an answer which was not timely filed, alleged, among others, that herein private respondents do not have a valid cause of action against it; that Finman is not privy to any transaction undertaken by Pan Pacific with herein private respondents; that herein private respondents' claims are barred by the statute of frauds and by the fact that they executed a waiver; that the receipts presented by herein private respondents are mere scraps of paper; that it is not liable for the acts of Mrs. Egil; that Finman has a cashbond of P75,000.00 only which is less than the required amount of P100,000.00; and that herein private respondents should proceed directly against the cash bond of Pan Pacific or against Mrs. Egil (Ibid., pp. 16--17).

On March 18, 1988, the Honorable Franklin M. Drilon, then the Secretary of Labor and Employment, upon the recommendation of the POEA hearing officer, issued an Order, the dispositive portion of which reads:

"WHEREFORE, premises considered, both respondents are hereby directed to pay jointly and severally the claims of complainants, as follows:

1. Abdulgani Salik ----- P 5,000.00
2. Balabagan Ampilan ----- 5,000.00
3. Ali Kuba ----- 5,000.00
4. Gandhi Dua ----- 5,000.00
6. Daud Malanao ----- 5,000.00

Based on the records of this Administration, respondent agency is presently serving a total period of suspension of seventeen (17) months imposed in three (3) separate orders issued on June 2, 1987, August 17, 1987 and September 23, 1987. Under the new schedule of penalties published on January 21, 1987 in the Philippine Inquirer, the penalty of cancellation shall be imposed when the offender has been previously penalized with suspension the total period of which is 12 months or more. Moreover, the penalty imposable in the case at bar is two (2) months suspension for each count of violation or a total period of suspension of ten (10) months as the acts were committed in April 1987. Thus, whether under the old schedule of penalties which required a total period of suspension of twenty-four (24) months for cancellation to be imposed or under the new schedule which provides for a twelve (12) month total suspension period, the penalty of cancellation may be properly imposed upon the herein respondent agency.

In view thereof, the license of Pan Pacific Overseas Recruiting Services is hereby cancelled, effective immediately.

SO ORDERED." (Ibid. pp. 20-21).

A motion for reconsideration having been denied (Ibid., p. 22), herein petitioner instituted the instant petition for certiorari, raising the following assigned errors:

I

THE HONORABLE ADMINISTRATOR AND THE HONORABLE SECRETARY OF LABOR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN MOTU PROPRIO IMPLEADING FINMAN AS CORRESPONDENT OF PAN PACIFIC IN POEA LRO/RRD CASE NO. 87-09-1022 DP WHICH WAS FILED BY ABDULGANI SALIK, ET. AL.;

II

THE HONORABLE SECRETARY OF LABOR ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DIRECTING FINMAN TO PAY JOINTLY AND SEVERALLY WITH PAN PACIFIC THE CLAIMS OF PRIVATE RESPONDENTS ON THE BASIS OF THE SURETYSHIP AGREEMENT BETWEEN FINMAN AND PAN PACIFIC AND THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA FOR SHORT); AND

III

THE FINDINGS OF FACT MADE BY THE POEA AND UPON WHICH THE HONORABLE SECRETARY OF LABOR BASED ITS QUESTIONED ORDERS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARE CONTRARY TO LAW.

(Ibid., p. 101)

As required by this Court, herein public respondents filed their memorandum on July 28, 1989 (Ibid., p. 84); while that of petitioner and private respondents were filed on September 11, 1989 (Ibid., p. 89) and March 16, 1990 (Ibid., p. 120), respectively.

The petition is devoid of merit.

In its first and second assigned errors, petitioner maintains that POEA has no jurisdiction to directly enforce the suretyship undertaking of FINMAN (herein petitioner) under the surety bond (Ibid., p. 104).

In the case at bar, it remains uncontroverted that herein petitioner and Pan Pacific entered into a suretyship agreement, with the former agreeing that the bond is conditioned upon the true and faithful performance and observance of the bonded principal (Pan Pacific) of its duties and obligations. It was also understood that under the suretyship agreement, herein petitioner undertook itself to be jointly and severally liable for all claims arising from recruitment violation of Pan Pacific (Ibid., p. 23), in keeping with Section 4, Rule V, Book I of the Implementing Rules of the Labor Code, which provides:

"Section 4. Upon approval of the application, the applicant shall pay to the Ministry (now Department) a license fee of P6,000.00, post a cash bond of P50,000.00 or negotiable bonds of equivalent amount convertible to cash issued by banking or financial institution duly endorsed to the Ministry (now Department) as well as a surety bond of P150,000.00 from an accredited bonding company to answer for valid and legal claims arising from violations of the conditions of the license or the contracts of employment and guarantee compliance with the provisions of the Code, its implementing rules and regulations and appropriate issuances of the Ministry (now Department)." (Underscoring Supplied)

Accordingly, the nature of Finman's obligation under the suretyship agreement makes it privy to the proceedings against its principal (Pan Pacific). As such Finman is bound, in the absence of collusion, by a judgment against its principal even though it was not a party to the proceedings (*Leyson v. Rizal Surety and Insurance Co.*, 16 SCRA 551 (1966)). Furthermore, in *Government of the Philippines v. Tizon* (20 SCRA 1182 [1967]), this Court ruled that where the surety bound itself solidarily with the principal obligor, the former is so dependent on the principal debtor "that the surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter." Applying the foregoing principles to the case at bar, it can be very well said that even if herein Finman was not impleaded in the instant case, still it (petitioner) can be held jointly and severally liable for all claims arising from recruitment violation of Pan Pacific. Moreover, as correctly stated by the Solicitor General, private respondents have a legal claim against Pan Pacific and its insurer for the

placement and processing fees they paid, so much so that in order to provide a complete relief to private respondents, petitioner had to be impleaded in the case (Rollo, p. 87).

Furthermore, Finman contends that herein respondent Secretary of Labor cannot validly assume jurisdiction over the case at bar; otherwise, proceedings will be railroaded resulting in the deprivation of the former of any remedial measures under the law.

The records of the case reveal that herein Finman filed a motion for reconsideration of the adverse decision dated March 18, 1988 of respondent Secretary of Labor. In the said motion for reconsideration, no jurisdictional challenge was made (*ibid.*, p. 22). It was only when it filed this petition that it assailed the jurisdiction of the respondent Secretary of Labor, and that of the POEA. But then, it was too late. Estoppel had barred herein petitioner from raising the issue, regardless of its merits (*Akay Printing Press v. Minister of Labor and Employment*, 140 SCRA 381 (1985)).

Hence, Finman's contention that POEA's and respondent Secretary's actions in impleading and directing herein petitioner to pay jointly and severally with Pan Pacific the claims of private respondents constitute a grave abuse of discretion amounting to lack of jurisdiction has no basis. (*Ibid.*, p. 101).

As regards the third assigned error, herein petitioner maintains that the findings of fact made by the POEA upon which respondent Secretary of Labor based his questioned Orders are not supported by substantial evidence and are contrary to law, is likewise untenable.

Herein petitioner, in raising this third issue, is, in effect, asking this Court to review the respondent Secretary's findings of facts.

Well-settled is the rule that findings of facts of the respondent Secretary are generally accorded great weight unless there was grave abuse of discretion or lack of jurisdiction in arriving at such findings (*Asiaworld Publishing House, Inc. v. Ople*, 152 SCRA 219 (1987)).

In the case at bar, it is undisputed that when the case was first set for hearing, only the private respondents appeared, despite summons having been served upon both herein petitioner and Pan Pacific. This, notwithstanding, both herein petitioner and Pan Pacific were again notified of the scheduled hearing, but, as aforesaid they also failed to appear (Rollo, p. 15). Accordingly, owing to the absence of any controverting evidence, respondent Secretary of Labor admitted and considered private respondents' testimonies and evidence as substantial. Under the circumstances, no justifiable reason can be found to justify disturbance of the findings of facts of the respondent Secretary of Labor, supported as they are by substantial evidence and in the absence of grave abuse of discretion (*Asiaworld Publishing House, Inc. v. Ople*, *supra*); and in line with the well established principle that the findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality. (*National Federation of Labor Union (NAFLU) v. Ople*, 143 SCRA 124 [1986])

PREMISES CONSIDERED, the questioned Orders of respondent Secretary of Labor are hereby AFFIRMED in toto.

SO ORDERED.

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

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