

PABLO R. MAGNO, PETITIONER, VS. PHILIPPINE NATIONAL CONSTRUCTION CORP. (PNCC), FORMERLY CONSTRUCTION AND DEVELOPMENT CORP. OF THE PHILIPPINES (CDCP), NATIONAL LABOR RELATIONS CO...

G.R. No. 87320. June 06, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for certiorari signed and filed by petitioner himself without the assistance of counsel to nullify the decision[1] of the Second Division of the National Labor Relations Commission (NLRC) of 16 February 1989 in NLRC Case No. NCR-00-12-04256-87 which reversed the decision[2] of Labor Arbiter Nieves V. de Castro of 22 September 1988. The latter ordered the reinstatement of petitioner to his former or equivalent position with back wages for two years without deductions computed at the rate then existing in January 1983.

In Our resolution of 8 May 1989 We required respondents to comment on the petition, which was complied with by respondent Philippine National Construction Corporation (PNCC), through the Office of the Government Corporate Counsel, on 2 June 1989[3] and respondent National Labor Relations Commission, through the Office of the Solicitor General, on 23 August 1989.[4]

On 1 September 1989 petitioner filed his Reply.[5]

We gave due course to the petition and required the parties to submit simultaneously their respective memoranda.[6] Respondent PNCC filed its Memorandum on 15 November 1989[7] while respondent NLRC filed a manifestation and motion on 21 December 1989 praying that its comment be considered its memorandum,[8] which We granted in Our resolution of 15 January 1990. Petitioner filed his Memorandum on 15 January 1990.[9]

The material operative facts as culled from the pleadings submitted by the parties are as follows:

Petitioner was employed by PNCC as welder/heavy equipment mechanic on a regular status from July 1975 up to October 1979 with a salary rate of P5.00 per hour. In November 1979, he was among PNCC's employees chosen to be deployed in its overseas construction project in Hongkong with a salary of US\$1.70 per hour. He worked there until January 1983 when the project was completed. He returned to the Philippines and since his arrival he has neither been assigned any work nor paid his salary. Instead, he was given the run-around under the pretext of waiting for a new assignment.[10]

Finally, on 4 December 1987 petitioner filed a complaint with the NLRC, National Capital Region, against PNCC for separation pay and/or retirement benefits (NLRC Case No. NCR-00-12-04256-87); after three hearings, and following receipt of PNCC's position paper which, among others, raised the issue of prescription, petitioner filed on 23 February 1988 an amended complaint to include the charge of illegal dismissal with a prayer for reinstatement with full back wages and without loss of seniority rights and other benefits.[11]

PNCC also raised the issue of jurisdiction, maintaining that since petitioner is a contract worker for overseas employment, it is the Philippine Overseas Employment Administration (POEA) which has exclusive jurisdiction over the case pursuant to Section 4(a) of Executive Order No. 797.

In her decision of 22 September 1988 Labor Arbiter Nieves V. de Castro decided the case in favor of the petitioner. Respondent PNCC appealed to the NLRC alleging therein that the Labor Arbiter committed serious errors of law and finding of facts by completely disregarding vital documents showing that petitioner is an overseas project employee, thus the Commission has no jurisdiction over the case, and that prescription had already set in with respect to his claim for separation pay. In its decision of 16 February 1989, the NLRC held that the appeal deserves merit not on jurisdictional grounds but on prescription. It held:

"x x x A complaint for illegal dismissal being a violation of one's right prescribes in four (4) years from the time of its accrual. Art. 292 of the Labor Code does not apply in the instant case but Art. 1146 of the Civil Code which supplied (sic) the Labor Code's deficiency.

The Supreme Court ruled that an action for damages involving a plaintiff separated from his employment for alleged unjustifiable causes is one for 'injury to the rights of the plaintiff, and must be brought within four (4) years' (Valencia vs. Cebu Portland, 106 Phil. 732). The four (4) years prescriptive period under Art. 1146 of the New Civil Code, applies by way of supplement in the instant case - being an injury to the rights of the plaintiff - (Collanta vs. Carnation Phil. Inc., G.R. No. 70615, Oct. 28, 1986).

The period of prescription mentioned under Art. 292 of the Labor Code refers to and is limited to money claims, all other cases of injury to rights of a working man being governed by the Civil Code. Accordingly, the plaintiff (complainant) had four (4) years within which to file his complaint for the injury to his right as provided under Art. 1146 of the Civil Code (Santos vs. CA, 96 SCRA 448 (1980))."

In the instant case, the complaint of petitioner was filed on 4 December 1987, or more than four (4) years from the accrual of the cause of action.

As to the issue of jurisdiction, NLRC ruled that Section 4(a) of Executive Order No. 797 does not apply to a regular employee (like petitioner) of a local establishment or a Philippine registered company on foreign assignment notwithstanding the execution of an overseas employment contract and the verification of such contract by the POEA.

Accordingly, NLRC reversed the decision of the Labor Arbiter. Hence this petition.

Petitioner submits that respondent NLRC acted with grave abuse of discretion and that its decision "runs counter to the findings of facts and evidence" and argues that prescription has not set in with respect to his claim because there was no formal termination of his employment issued by PNCC; he was "merely being floated" or "given the run around under the pretext of waiting for a new assignment." He further argues that the statute of limitations has been devised to operate primarily against those who sleep on their rights and not against those who desire to act but cannot do so for causes beyond their control.[12] Insofar as he is concerned, much as he wanted to institute his claim, he "was prevented to do so beyond his control for the simple reason that private respondent have (sic) tried to circumvent the law by merely floating" him.

In its Comment, PNCC asserts that NLRC is correct in holding that petitioner is barred by prescription; moreover, it alleges that he is a project employee, thus not entitled to separation pay.

In its Comment, NLRC maintains the correctness of the questioned decision. As regards the claim of petitioner that formal notice of termination is necessary before the period of prescription could commence to run, it argues that absence of notice does not mean that petitioner's employment was not terminated by respondent. After his

return from Hongkong in January 1983 he was neither given any work assignment nor paid his salary. A clear intention was thus manifested to dispense with his services which, from the import of these circumstances, petitioner could not have failed to comprehend. He should not have waited for December 1987 to file his complaint.

The petition is not impressed with merit.

There is no showing whatsoever that respondent NLRC acted with grave abuse of discretion in reversing the decision of the Labor Arbiter. It correctly ruled that petitioner's cause of action had already prescribed when he filed his complaint with the regional office of the NLRC on 4 December 1987. His cause of action accrued immediately after his arrival from Hongkong in January 1983 when, as he claimed, he was not given any assignment nor paid his salary.

In his original complaint, petitioner merely asked for payment of separation pay and/or retirement. In his amended complaint, petitioner's cause of action is founded on illegal dismissal and prayed for reinstatement with full back wages and without loss of seniority rights and other benefits, or, in the alternative, the payment of his separation benefits.

On the basis then of his amended complaint, the action is not for an ordinary money claim but for reinstatement by reason of illegal dismissal, which, undoubtedly, is an injury to his rights. Accordingly, the action should have been brought within four (4) years from its occurrence pursuant to Article 1146 of the Civil Code.[13]

Had petitioner stuck to his original complaint, which was a simple money claim for separation pay, Article 292 (now 291) of the Labor Code which provides:

"x x x All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise, they shall be forever barred."

would have, nevertheless, successfully blocked his claim.

While We commiserate with petitioner who found himself jobless upon his return and while We fully recognize the special protection which the Constitution, labor laws, and social legislation accord the workingman, We cannot, however, alter amend the law on prescription to relieve him of the consequences of his inaction. *Vigilantibus, non dormientibus, jura subveniunt* (Laws come to the assistance of the vigilant, not of the sleeping). His explanation that he could not have filed the complaint earlier because "he was prevented to do so beyond his control for the simple reason that private respondent have (sic) tried to circumvent the law by merely floating" him is very flimsy and does not even evoke sympathetic consideration, if at all it is proper and necessary. We note that petitioner herein is not an unlettered man; he seems to be educated and assertive of his rights and appears to be familiar with judicial procedures. He filed a motion for extension of time to file the petition and the petition itself without the assistance of counsel. We cannot believe that if indeed he had a valid grievance against PNCC he would not have taken immediate positive steps for its redress.

WHEREFORE, for lack of merit, the Petition is DISMISSED without pronouncements as to costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Annex "A" of Petition; Rollo, 15-19.

[2] Annex "B" of Petition; Id., 21-27.

[3] Rollo, 48-52.

[4] Id., 62-68.

[5] Id., 70-71.

[6] Resolution of 25 September 1989; Id., 22.

[7] Id., 73-79.

[8] Id., 89-90.

[9] Id., 92-95.

[10] Annex "B" of Petition.

[11] Motion to Strike Out Amended Complaint; Rollo, 28-31; Decision of Castro; Rollo, 21.

[12] Republic of the Philippines vs. Court of Appeals, G.R. No. 43179, 27 June 1985.

[13] Santos vs. Court of Appeals, 96 SCRA 448.

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