

EUGENIO DE JESUS, PETITIONER, VS. PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (FORMERLY CDCP), AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 89990, March 20, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The Court reverses the decision of the respondent National Labor Relations Commission in this case, dismissing the petitioner's appeal and affirming, consequently, the dismissal rendered by the labor arbiter.

In the Court's Resolution of September 20, 1989, the Court granted leave for the petitioner to prosecute the case as a pauper litigant.[1] Meanwhile, in a Manifestation dated January 10, 1990, the Solicitor General informed the Court that, based on his own assessment, he is unable to defend the decision of the National Labor Relations Commission.

The records disclose that the petitioner, prior to his separation, was a carpenter for the respondent, Philippine National Construction Corporation; that sometime in September, 1984, while on duty at Apalit, Pampanga, where the respondent corporation was pursuing the construction of the Apalit Bridge, he vomitted blood and was treated at the company clinic after which he was sent home; that he reported back in December, 1984, but was no longer accepted and was informed by Moises Chiu, General Manager of the respondent corporation, that he had been replaced; that between January and September 1985, he sought reinstatement but invariably, he was rebuffed by the company.

Presently, he instituted a complaint, initially, for separation pay, but upon an amendment, prayed for reinstatement on account of an illegal dismissal plus backwages and payment of legal benefits.

The private respondent, on the other hand, presented the petitioner's "201-file" which disclosed that he had been hired as Carpenter II on March 31, 1984; that among the terms and conditions of his employment was that he was being "employed only for the period and specific works stated"[2] in his appointment, and that as a "project worker" he was subject to the provisions of Policy instructions No. 20; that his separation was due to the completion of the project; and that he had signed a clearance wherein he admitted having received all remunerations due him.

As we adverted to at the outset, the labor arbiter dismissed the complaint. The petitioner then appealed, but was dismissed, on a finding by the National Labor Relations Commission that the appeal had been filed unseasonably. The latter subsequently reconsidered, but at any rate, affirmed the appealed decision.

In support of this petition, the petitioner attached thereto, among other things, certain "personnel action forms" which showed that he was given appointments for specific projects on June 16, 1974,[3] July 2, 1975,[4] July 1, 1976,[5] May 1, 1977,[6] April 5, 1978,[7] December 1, 1979,[8] July 30, 1980,[9] November 20, 1981,[10] March 16, 1982,[11] August 24, 1983,[12] September 30, 1983,[13] December 30, 1983,[14] and May 1,

1984;[15] and that since January 15, 1978, he had been a member of the CDCP Employees Savings & Loan Association;[16] and that, as a result, he has become a regular, not a project, employee, who may be terminated only for a lawful cause.

The Government Corporate Counsel, arguing on behalf of the respondent corporation in lieu of the Solicitor General, alleges that the findings of fact of the National Labor Relations Commission are binding on the Court, and that the finding that the petitioner was a project employee is a finding of fact; that the petitioner has been compensated fully; and that the personnel action forms partake of new matters that can not be appreciated at this stage of the proceedings.

The National Labor Relations Commission, on the other hand, denies any grave abuse of discretion attributed to it because it was not aware of the facts the petitioner now posits.

The petition is impressed with merit.

It is clear from the records that the petitioner is, contrary to the assailed decision, a non-project employee and is, hence, entitled to regular employment having rendered service for more than ten years. As such, he can not be terminated unless for just cause.

Article 280 of the Labor Code provides, as follows:

ART. 280. Regular and Casual Employment. -- The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement 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 (sic) 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.

Without question, the petitioner, a carpenter, performs work "necessary, or desirable" in the construction business, the respondent corporation's field of activity. The fact however that he had been involved in project works will not alter his status because the law requires a "specific project or undertaking the completion or termination of which has been determined at the time of the engagement" in order to make a project employee a true project employee. Based on his employment contract:

Your herein Appointment Employment will be co-terminus with the need of Structures [of North Luzon Expressway (Stage) II] as it will necessitate personnel in such number and duration contingent upon the progress accomplishment from time to time. The company shall determine the personnel and the number as the work progresses.[17]

we can not say that the petitioner's engagement has been pre-determined because the duration of the work is "contingent upon the progress accomplishment" and secondly, the company, under the contract, is free to "determine the personnel and the number as the work progresses." Clearly, the employment is subject to no term but rather, a condition, that is, "progress accomplishment." It can not therefore be said to be definite that will therefore exempt the respondent company from the effects of Article 280.[18]

It is to be noted that under Policy Instructions No. 20 of the Secretary of Labor, regular employment in specific

undertakings are recognized and defined as follows:

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Members of a work pool from which a construction company draws its project employees, if considered employees of the construction company while in the work pool, are non-project employees or employees for an indefinite period. If they are employed in a particular project, the completion of the project or of any phase thereof will not mean severance of employer-employee relationship.

However, if the workers in the work pool are free to leave anytime and offer their services to other employers then they are project employees employed by a construction company in a particular project or in a phase thereof.

Generally, there are three (3) types of non-project employees: first, probationary employees; second, regular employees; and third, casual employees.

Probationary employees are those who, upon the completion of the probationary period, are entitled to regularization. Regular employees are those who have completed the probationary period or those appointed to fill up regular positions vacated as a result of death, retirement, resignation, or termination of the regular holders thereof. On the other hand, casual employees are those employed for a short term duration to perform work not related to the main line of the business of the employer.

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Based therefore on the personnel action forms submitted to this Court, the petitioner is either a member of a work pool of workers, which Policy Instructions No. 20 terms as "non-project employees," or at the very least, a probationary worker who, after the period of six months, has achieved a regular status.[19]

As a regular employee, the petitioner could not have been validly terminated by reason alone of the completion of the project.

The respondent corporation, of course, assails the various personnel action forms as new matters that can not be introduced in the Supreme Court without infringing its right to due process. What the respondent firm very obviously overlooks is the fact that: (1) it had known all along, but concealed it from the labor arbiter, that the petitioner had been working for the firm since 1974; (2) that notwithstanding, it insisted that he, the petitioner, had joined the company in 1984 only; and (3) it took an unfair advantage of the petitioner's unfamiliarity with procedure, and will take that advantage herein, in order to trap him, so to speak, to its theory of the case.

It is true that this Court is normally bound by the factual findings of the National Labor Relations Commission, that rule is, however, subject to a fundamental exception, that is, unless it would defeat, rather than enhance, the State protection to labor guaranteed by the Constitution.[20] No rule, legal or judicial, can override a constitutional mandate.

The respondent corporation, as we said, was no stranger to the personnel action forms in question, and hence it can not rightfully say that they constitute "fresh matters." It has failed furthermore to deny their genuineness, much less, their existence.

To allow, therefore, the respondent company to object to the above personnel action forms on nebulous pretenses of violation of due process is indeed, to reward it for its own breach of faith.

We can not, finally, accept the alleged "quitclaim"[21] executed by the petitioner in which he denied any liability by the employer, as a genuine act of remission in this case. There is nothing there that suggests any acceptance by the petitioner of his termination from work. Apart from that, the same is couched in the English language and the

respondent company has not shown that the petitioner understands English. We can not presume that he, a humble carpenter, is aware of that language, much more, conversant with it, and under the Civil Code, it is incumbent upon the respondent to "show that the terms thereof have been fully explained." [22] It has not made that showing here.

WHEREFORE, the petition is GRANTED. The petitioner is REINSTATED and awarded backwages based on the latest pay scale corresponding to the position Carpenter II equivalent to three years without qualification or deduction.

IT IS SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Rollo, 37.

[2] Id., 92.

[3] Id., 17.

[4] Id., 18.

[5] Id., 19.

[6] Id., 20.

[7] Id., 21.

[8] Id., 22.

[9] Id., 23.

[10] Id., 24.

[11] Id., 25.

[12] Id., 26.

[13] Id., 27.

[14] Id.

[15] Id., 28.

[16] Id., 30.

[17] Rollo, id., 84-85; emphasis in the original.

[18] See *Abe v. Foster Wheeler Corporation*, 110 Phil. 209 (1960).

[19] See *Beta Electric Corporation v. NLRC*, G.R. No. 86408, February 15, 1990.

[20] CONST., art. II, sec. 18; at. XIII, sec. 3.

[21] Rollo, id., 75.

[22] CIVIL CODE, art. 1332.

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