

**GENERAL MILLING CORPORATION AND EARL TIMOTHY CONE,
PETITIONERS, VS. HON. RUBEN D. TORRES, IN HIS CAPACITY AS
SECRETARY OF LABOR AND EMPLOYMENT, HON. BIENVENIDO E.
LAGUESMA, IN H...**

G.R. No. 93666. April 22, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 1 May 1989, the National Capital Region of the Department of Labor and Employment issued Alien Employment Permit No. M-0689-3-535 in favor of petitioner Earl Timothy Cone, a United States citizen, as sports consultant and assistant coach for petitioner General Milling Corporation ("GMC").

On 27 December 1989, petitioners GMC and Cone entered into a contract of employment whereby the latter undertook to coach GMC's basketball team.

On 15 January 1990, the Board of Special Inquiry of the Commission on Immigration and Deportation approved petitioner Cone's application for a change of admission status from temporary visitor to prearranged employee.

On 9 February 1990, petitioner GMC requested renewal of petitioner Cone's alien employment permit. GMC also requested that it be allowed to employ Cone as full-fledged coach. The DOLE Regional Director, Luna Piezas, granted the request on 15 February 1990.

On 18 February 1990, Alien Employment Permit No. M-0290-3-881, valid until 25 December 1990, was issued.

Private respondent Basketball Coaches Association of the Philippines ("BCAP") appealed the issuance of said alien employment permit to the respondent Secretary of Labor who, on 23 April 1990, issued a decision ordering cancellation of petitioner Cone's employment permit on the ground that there was no showing that there is no person in the Philippines who is competent, able and willing to perform the services required nor that the hiring of petitioner Cone would redound to the national interest.

Petitioner GMC filed a Motion for Reconsideration and two (2) Supplemental Motions for Reconsideration but said Motions were denied by Acting Secretary of Labor Bienvenido E. Laguesma in an Order dated 8 June 1990.

Petitioners are now before the Court on a Petition for Certiorari, dated 14 June 1990, alleging that:

- respondent Secretary of Labor gravely abused his discretion when he revoked petitioner Cone's alien employment permit; and
- Section 6 (c), Rule XIV, Book I of the Omnibus Rules Implementing the Labor Code is null and void as it is in violation of the enabling law as the Labor Code does not empower respondent Secretary to determine if the employment of an alien would redound to national interest.

Deliberating on the present Petition for Certiorari, the Court considers that petitioners have failed to show any

grave abuse of discretion or any act without or in excess of jurisdiction on the part of respondent Secretary of Labor in rendering his decision, dated 23 April 1990, revoking petitioner Cone's Alien Employment Permit.

The alleged failure to notify petitioners of the appeal filed by private respondent BCAP was cured when petitioners were allowed to file their Motion for Reconsideration before respondent Secretary of Labor.[1]

Petitioner GMC's claim that hiring of a foreign coach is an employer's prerogative has no legal basis at all. Under Article 40 of the Labor Code, an employer seeking employment of an alien must first obtain an employment permit from the Department of Labor. Petitioner GMC's right to choose whom to employ is, of course, limited by the statutory requirement of an alien employment permit.

Petitioners will not find solace in the equal protection clause of the Constitution. As pointed out by the Solicitor-General, no comparison can be made between petitioner Cone and Mr. Norman Black as the latter is "a long time resident of the country," and thus, not subject to the provisions of Article 40 of the Labor Code which apply only to "non--resident aliens." In any case, the term "non-resident alien" and its obverse "resident alien," here must be given their technical connotation under our law on immigration.

Neither can petitioners validly claim that implementation of respondent Secretary's decision would amount to an impairment of the obligations of contracts. The provisions of the Labor Code and its Implementing Rules and Regulations requiring alien employment permits were in existence long before petitioners entered into their contract of employment. It is firmly settled that provisions of applicable laws, especially provisions relating to matters affected with public policy, are deemed written into contracts.[2] Private parties cannot constitutionally contract away the otherwise applicable provisions of law.

Petitioners' contention that respondent Secretary of Labor should have deferred to the findings of Commission on Immigration and Deportation as to the necessity of employing petitioner Cone, is, again, bereft of legal basis. The Labor Code itself specifically empowers respondent Secretary to make a determination as to the availability of the services of a "person in the Philippines who is competent, able and willing at the time of application to perform the services for which an alien is desired." [3] In short, the Department of Labor is the agency vested with jurisdiction to determine the question of availability of local workers. The constitutional validity of legal provisions granting such jurisdiction and authority and requiring proof of non-availability of local nationals able to carry out the duties of the position involved, cannot be seriously questioned.

Petitioners apparently also question the validity of the Implementing Rules and Regulations, specifically Section 6 (c), Rule XIV, Book I of the Implementing Rules, as imposing a condition not found in the Labor Code itself. Section 6 (c), Rule XIV, Book I of the Implementing Rules, provides as follows:

"Section 6. Issuance of Employment Permit — The Secretary of Labor may issue an employment permit to the applicant based on:

- (a) Compliance by the applicant and his employer with the requirements of Section 2 hereof;
- (b) Report of the Bureau Director as to the availability or non-availability of any person in the Philippines who is competent and willing to do the job for which the services of the applicant are desired;
- (c) His assessment as to whether or not the employment of the applicant will redound to the national interest;
- (d) Admissibility of the alien as certified by the Commission on Immigration and Deportation;
- (e) The recommendation of the Board of Investments or other appropriate government agencies if the applicant will be employed in preferred areas of investments or in accordance with the imperative of economic development;

x x x x x x x"

(Underscoring supplied)

Article 40 of the Labor Code reads as follows:

"ART. 40. Employment permit of non-resident aliens. — Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor.

The employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.

For an enterprise registered in preferred areas of investments, said employment permit may be issued upon recommendation of the government agency charged with the supervision of said registered enterprise."
(Underscoring supplied)

Petitioners apparently suggest that the Secretary of Labor is not authorized to take into account the question of whether or not employment of an alien applicant would "redound to the national interest" because Article 40 does not explicitly refer to such assessment. This argument (which seems impliedly to concede that the relationship of basketball coaching and the national interest is tenuous and unreal) is not persuasive. In the first place, the second paragraph of Article 40 says: "[t]he employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired." The permissive language employed in the Labor Code indicates that the authority granted involves the exercise of discretion on the part of the issuing authority. In the second place, Article 12 of the Labor Code sets forth a statement of objectives that the Secretary of Labor should, and indeed must, take into account in exercising his authority and jurisdiction granted by the Labor Code:

"ART. 12. Statement of Objectives. — It is the policy of the State:

a) To promote and maintain a state of full employment through improved manpower training, allocation and utilization;

x x x x x x x x

c) To facilitate a free choice of available employment by persons seeking work in conformity with the national interest;

d) To facilitate and regulate the movement of workers in conformity with the national interest;

e) To regulate the employment of aliens, including the establishment of a registration and/or work permit system;

x x x x x x x x"

Thus, we find petitioners' arguments on the above points of constitutional law too insubstantial to require further consideration.

Petitioners have very recently manifested to this Court that public respondent Secretary of Labor has reversed his earlier decision and has issued an Employment Permit to petitioner Cone. Petitioners seek to withdraw their Petition for Certiorari on the ground that it has become moot and academic.

While ordinarily this Court would dismiss a petition that clearly appears to have become moot and academic, the

circumstances of this case and the nature of the questions raised by petitioners are such that we do not feel justified in leaving those questions unanswered.[4] Moreover, assuming that an alien employment permit has in fact been issued to petitioner Cone, the basis of the reversal by the Secretary of Labor of his earlier decision does not appear in the record. If such reversal is based on some view of constitutional law or labor law different from those here set out, then such employment permit, if one has been issued, would appear open to serious legal objections.

ACCORDINGLY, the Court Resolved to DISMISS the Petition for Certiorari for lack of merit. Costs against petitioners.

Fernan, C.J., (Chairman), Bidin, and Davide, Jr., JJ., concur.

Gutierrez, Jr., J., in the result.

[1] De Leon v. Commission on Elections, 129 SCRA 117 (1984).

[2] E.g., Pakistan International Airways Corporation v. Hon. Blas F. Ople, et al., G.R. No. 61594, 28 September 1990; Commissioner of Internal Revenue v. United States Lines Co., 5 SCRA 175 (1962).

[3] Article 40 of the Labor Code.

[4] Cf. Javier v. Commission on Elections, 144 SCRA 194 (1986).

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