

FILIPINAS PORT SERVICES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PATERNO LIBOON, SEGUNDO AQUINO, JOVITO BULAY, DOMINGO NAVOA, DELFIN BERMEJO, CELEDONIO MANGUB...

G.R. No. 97237. August 16, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for clarification with prayer for preliminary injunction filed by Filipinas Port Services, Inc. (hereinafter referred to as Filport) seeking to clarify two conflicting decisions rendered by this Court in cases involving identical or similar parties, facts and issues.

The antecedent facts of the case are as follows:

In view of the government policy which ordained that cargo handling operations should be limited to only one cargo handling operator-contractor for every port (under Customs Memorandum Order 28075, later on superseded by General Ports Regulations of the Philippine Ports Authority) the different stevedoring and arrastre corporations operating in the Port of Davao were integrated into a single dockhandlers corporation, known as the Davao Dockhandlers, Inc., which was registered with the Securities and Exchange Commission on July 13, 1976.

Due to the late receipt of its permit to operate at the Port of Davao from the Bureau of Customs, Davao Dockhandlers, Inc., which was subsequently renamed Filport, actually started its operation on February 16, 1977.

As a result of the merger, Section 118, Article X of the General Guidelines on The Integration of Stevedoring/Arrastre Services (PPA Administrative Order No. 13-77) mandated Filport to draw its personnel complements from the merging operators, as follows:

"Sec. 118. Absorption of labor - Subject to the provisions of the immediate preceding section, and consistent with the actual operational requirements of the new management, all labor force together with its necessary personnel complement, of the merging operators shall be absorbed by the merged or integrated organization to constitute its labor force." (Emphasis supplied)

Thus, Filport's labor force was mostly taken from the integrating corporations, among them the private respondents.

On February 4, 1987, private respondent Paterno Liboon and 18 others filed a complaint with the Department of Labor and Employment Regional Office in Davao City, alleging that they were employees of Filport since 1955 through 1958 up to December 31, 1986 when they retired; that they were paid retirement benefits computed from February 16, 1977 up to December 31, 1986 only; and that taking into consideration their continuous length of service, they are entitled to be paid retirement benefits differentials from the time they started working with the predecessors of Filport up to the time they were absorbed by the latter in 1977 (p. 15, Rollo).

Finding Filport a mere alter ego of the different integrating corporations, the Labor Arbiter held Filport liable for retirement benefits due private respondents for services rendered prior to February 16, 1977. Said decision was affirmed by the NLRC on appeal.

Filport filed a petition for certiorari with the Supreme Court docketed as G.R. No. 85704, claiming that it is an entirely new corporation with a separate juridical personality from the integrating corporations; and that Filport is not a successor employer, liable for the obligations of private respondents' previous employers, as shown clearly in the memorandum dated November 21, 1978 of PPA Assistant General Manager Maximo S. Dumlao, Jr., to wit:

"21 November 1978

"MEMORANDUM

"TO : The Officer-in-Charge

PMU Davao

"FROM : The ACM for Operations

"SUBJECT : Clarification of Sec. 116 of PPA Administrative Order No. 13-77 of New Organization's Liability

"In reply to your telegram dated November 16, 1978, Sec. 116 of PPA Administrative Order #13-77 is hereby quoted for clarification:

"New Organization's Liability - The integrated cargo-handling organization shall be absolutely free from any liability or obligation of the merging operators who shall continue to be individually liable for their respective liabilities or obligations, if any." (underscoring supplied) x x x

"The new organization's liability shall be the payment of salaries, benefits and all other money due the employee as a result of his employment, starting on the date of his service in the newly integrated organization.

"In answer to your query, therefore, the absorption of an employee into a newly integrated organization does not include the carry over of his length of service.

s/t MAXIMO S. DUMLAO, JR.

Asst. General Manager"

While G.R. No. 85704 was still pending decision by this Court, Josefino Silva, another employee of Filport, instituted a suit against Filport and Damasticor (one of the defunct stevedoring firms) claiming for retirement benefits for services rendered prior to February 19, 1977. The labor arbiter found for Josefino Silva and said decision was affirmed by the NLRC.

Filport filed a petition for certiorari with the Supreme Court docketed as G.R. No. 86026. On August 31, 1989, this Court, through the First Division, rendered a decision, holding that:

"Petitioner (Filport) cannot be held liable for the payment of the retirement pay of private respondent (Josefino Silva) while in the employ of DAMASTICOR x x x who is held responsible for the same as the labor contract is in personam and cannot be passed on to the petitioner." (Rollo, p. 7)

In so ruling, the First Division relied heavily on the case of *Fernando v. Angat Labor Union* (5 SCRA 248) where it was held that unless expressly assumed, labor contracts are not enforceable against a transferee of an enterprise, labor contracts being in personam.

Per entry of judgment, the aforesaid decision became final and executory on November 24, 1989 (p. 87, Rollo).

On September 3, 1990, however, this Court, through the Second Division, dismissed the petition in G.R. No. 85704 "for failure to sufficiently show that the questioned judgment is tainted with grave abuse of discretion."

Per entry of judgment, said resolution became final and executory on December 4, 1990 (p. 108, Rollo).

Hence, the instant petition for clarification with prayer for preliminary injunction to enjoin the respondents from enforcing the decision in G.R. No. 85704 until further orders of this Court.

We see no reason to disturb the findings of fact of the public respondent, supported as they are by substantial evidence in the light of the well established principle that 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, and that judicial review by this Court on labor cases does not go so far as to evaluate the sufficiency of the evidence upon which the Labor Arbiter and the NLRC based their determinations but are limited to issues of jurisdiction or grave abuse of discretion. (National Federation of Labor Union v. Ople, 143 SCRA 129).

In the case filed by private respondent Paterno Liboon et al against Filport, the findings of the NLRC in its November 27, 1987 decision are categorical:

"In resolving the issues, the Labor Arbiter concludes as follows:

"The eventual incorporation of the arrastre/stevedoring firms and their subsequent registration with the Securities and Exchange Commission on July 13, 1975 brought to the fore the interlocking ownership of the new corporation.

x x x x x x x x

"Subsequent amendment of its Articles of Incorporation highlighted by the renaming of the Davao Dockhandlers, Inc. to Filipinas Port Services, Inc. did not diminish the fact that the ownership and constituency of the new corporation are basically identical with the previous owners.

"It is, therefore, the considered view of this Office that respondent Filport being a mere alter ego of the different merging companies has at the very least, the obligation not only to absorb into its employ workers of the dissolved companies, but also to absorb the length of service earned by the absorbed employees from their former employers.

x x x x x x x x

"We are in full accord with, and hereby sustain, the findings and conclusions of the Labor Arbiter. Under the circumstances, respondent-appellant is a successor employer. As a successor entity, it is answerable to the lawful obligations of the predecessor employers, herein integrees. This Commission has so held under the principle of 'substitution' that the successor firm is liable to (sic) the obligations of the predecessor employer, notwithstanding the change in management or even personality, of the new contracting employer." (Lakas Ng Manggagawang Filipino [LAKAS] v. Tarlac Electrical Cooperative, Inc. et al., NLRC Case No. RB III-157-75, January 28, 1978, En Banc). x x x The Supreme Court earlier upheld the "Substitutionary" doctrine in the case of Benguet Consolidated, Inc. vs. BOI Employees & Workers Union, (G.R. L-24711, April 30, 1968, 23 SCRA 465). (pp. 35 & 37, Rollo)

Said findings were reiterated in the case filed by Josefino Silva against Filport where the NLRC, in its decision dated January 19, 1988, further ruled that:

"x x x As We have ruled in the similar case involving herein appellant, the latter is deemed a survivor entity because it continued in an essentially unchanged manner the business operators of the predecessor arrastre and port service operators, hiring substantially the same workers, including herein appellee, of the integree

predecessors, using substantially the same facilities, with similar working conditions and line of business, and employing the same corporate control, although under a new management and corporate personality." (G.R. No. 86026, p. 35, Rollo)

Thus, granting that Filport had no contract whatsoever with the private respondents regarding the services rendered by them prior to February 16, 1977, by the fact of the merger, a succession of employment rights and obligations had occurred between Filport and the private respondents. The law enforced at the time of the merger was Section 3 of Act No. 2772 which took effect on March 6, 1918. Said law provides:

"Sec. 3. Upon the perfecting, as aforesaid, of a consolidation made in the manner herein provided, the several corporations parties thereto shall be deemed and taken as one corporation, upon the terms and conditions set forth in said agreement; or, upon the perfecting of a merger, the corporation merged shall be deemed and taken as absorbed by the other corporation and incorporated in it; and all and singular rights, privileges, and franchises of each of said corporations, and all property, real and personal, and all debts due on whatever account, belonging to each of such corporations, shall be taken and deemed as transferred to and vested in the new corporation formed by the consolidation, or in the surviving corporation in case of merger, without further act or deed; and the title to real estate, either by deed or otherwise, under the laws of the Philippine Islands vested in either corporation, shall not be deemed in any way impaired by reason of this Act: Provided, however, That the rights of creditors and all liens upon the property of either of said corporations shall be preserved unimpaired; and all debts, liabilities, and duties of said corporations shall thenceforth attach to the new corporation in case of a consolidation, or to the surviving corporation in case of a merger, and be enforced against said new corporation or surviving corporation as if said debts, liabilities, and duties had been incurred or contracted by it."

As earlier stated, it was mandated that Filport shall absorb all labor force and necessary personnel complement of the merging operators, thus, clearly indicating the intention to continue the employer-employee relationships of the individual companies with its employees through Filport.

The alleged memorandum of the PPA Assistant General exonerating Filport from any liability arising from and as a result of the merger is contrary to public policy and is violative of the workers' right to security of tenure. Said memorandum was issued in response to a query of the PMU Officer-in-Charge and was not even published nor made known to the workers who came to know of its existence only at the hearing before the NLRC. (G.R. No. 86026, pp. 93-94, Rollo)

The principle involved in the case cited by the First Division (*Fernando v. Angat Labor Union* [supra]) applies only when the transferee is an entirely new corporation with a distinct personality from the integrating firms and NOT where the transferee was found to be merely an alter ego of the different merging firms, as in this case. Thus, Filport has the obligation not only to absorb the workers of the dissolved companies but also to include the length of service earned by the absorbed employees with their former employers as well. To rule otherwise would be manifestly less than fair, certainly, less than just and equitable.

Finally, to deny the private respondents the fruits of their labor corresponding to the time they worked with their previous employers would render at naught the constitutional provisions on labor protection. In interpreting the protection to labor and social justice provisions of the Constitution and the labor laws, and rules and regulations implementing the constitutional mandate, the Supreme Court has always adopted the liberal approach which favors the exercise of labor rights. (*Euro-Linea, Phils., Inc. v. NLRC*, 156 SCRA 83).

WHEREFORE, the Resolution of the Second Division of this Court in G.R. No. 85704 dated September 3, 1990 is hereby REITERATED.

SO ORDERED.

Fernan, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Narvasa, and Gancayco, JJ., in the result.

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