

OPULENCIA ICE PLANT AND STORAGE AND/OR DR. MELCHOR OPULENCIA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), LABOR ARBITER NUMERIANO VILLENA AND MANUEL P...

G.R. No. 98368. December 15, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

MANUEL P. ESITA was for twenty (20) years a compressor operator of Tiongson Ice Plant in San Pablo City. In 1980 he was hired as compressor operator-mechanic for the ice plants of petitioner Dr. Melchor Opulencia located in Tanauan, Batangas, and Calamba, Laguna. Initially assigned at the ice plant in Tanauan, Esita would work from seven o'clock in the morning to five o'clock in the afternoon receiving a daily wage of P35.00.

In 1986, Esita was transferred to the ice plant in Calamba, which was then undergoing overhauling, taking the place of compressor operator Lorenzo Eseta, who was relieved because he was already old and weak. For less than a month, Esita helped in the construction-remodeling of Dr. Opulencia's house.

On 6 February 1989, for demanding the correct amount of wages due him, Esita was dismissed from service. Consequently, he filed with Sub-Regional Arbitration Branch IV, San Pablo City, a complaint for illegal dismissal, underpayment, non-payment for overtime, legal holiday, premium for holiday and rest day, 13th month, separation/retirement pay and allowances against petitioners.

Petitioners deny that Esita is an employee. They claim that Esita could not have been employed in 1980 because the Tanauan ice plant was not in operation due to low voltage of electricity and that Esita was merely a helper/peon of one of the contractors they had engaged to do major repairs and renovation of the Tanauan ice plant in 1986. Petitioners further allege that when they had the Calamba ice plant repaired and expanded, Esita likewise rendered services in a similar capacity, and thus admitting that he worked as a helper/peon in the repair or remodeling of Dr. Opulencia's residence in Tanauan.

Opulencia likewise maintains that while he refused the insistent pleas of Esita for employment in the ice plants due to lack of vacancy, he nonetheless allowed him to stay in the premises of the ice plant for free and to collect fees for crushing or loading ice of the customers and dealers of the ice plant. Opulencia claims that in addition, Esita enjoyed free electricity and water, and was allowed to cultivate crops within the premises of the ice plant to augment his income. Petitioners however admit that "following the tradition of 'pakikisama' and as a token of gratitude on the part of the complainant (Esita), he helps in the cleaning of the ice plant premises and engine room whenever he is requested to do so, and this happens only (at) twice a month."

On 8 December 1989, Labor Arbiter Numeriano D. Villena rendered a decision[1] finding the existence of an employer-employee relationship between petitioners and Esita and accordingly directed them to pay him P33,518.02 representing separation pay, underpayment of wages, allowances, 13th month, holiday, premium for

holiday, and rest day pays. The claim for overtime pay was however dismissed for lack of basis, i.e., Esita failed to prove that overtime services were actually rendered.

On 29 November 1990, the Third Division of the National Labor Relations Commission, in Case No. RAB-IV-2-2206-89, affirmed the decision of Labor Arbiter Villena but reduced the monetary award to P28,344.60 as it was not proven that Esita worked every day including rest days and on the days before the legal holidays. On 26 March 1991, petitioners' motion for reconsideration was denied.

In this present recourse, petitioners seek reversal of the ruling of public respondents Labor Arbiter and NLRC, raising the following arguments: that public respondents have no jurisdiction over the instant case; that Esita's work in the repair and construction of petitioners' ice plant and the renovation of Dr. Oplencia's residence could not have ripened into a regular employment; that petitioners' benevolence in allowing Esita to stay inside the company's premises free of charge for humanitarian reason deserves commendation rather than imposition of undue penalty; that Esita's name does not appear in the payrolls of the company which necessarily means that he was not an employee; and, that Esita's statements are inconsistent and deserving of disbelief. On 13 May 1991, petitioners' prayer for a temporary restraining order to prevent respondents from enforcing the assailed resolutions of NLRC was granted.

The instant petition lacks merit, hence, must be dismissed.

Petitioners allege that there is no employer-employee relationship between them and Esita; consequently, public respondents have no jurisdiction over the case. Petitioners even go to the extent of asserting that "in cases like the one at bar where employer-employee relationship has been questioned from the very start, Labor Arbiters and the NLRC have no jurisdiction and should not assume jurisdiction therein."

While the Labor Arbiter and the NLRC may subsequently be found without jurisdiction over a case when it would later appear that no employer-employee relationship existed between the contending parties, such is not the situation in this case where the employer-employee relationship between petitioners and Esita was clearly established. If the argument of petitioners were to be allowed, then unscrupulous employers could readily avoid the jurisdiction of the Labor Arbiters and NLRC, and may even elude compliance with labor laws only on the bare assertion that an employer-employee relationship does not exist.

Petitioners further argue that "complainant miserably failed to present any documentary evidence to prove his employment. There was no time sheet, pay slip and/or payroll/cash voucher to speak of. Absence of these material documents are necessarily fatal to complainant's cause."

We do not agree. No particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted. For, if only documentary evidence would be required to show that relationship, no scheming employer would ever be brought before the bar of justice, as no employer would wish to come out with any trace of the illegality he has authored considering that it should take much weightier proof to invalidate a written instrument.[2] Thus, as in this case where the employer-employee relationship between petitioners and Esita was sufficiently proved by testimonial evidence, the absence of time sheet, time record or payroll has become inconsequential.

The petitioners' reliance on *Sevilla v. Court of Appeals*[3] is misplaced. In that case, we did not consider the inclusion of employee's name in the payroll as an independently crucial evidence to prove an employer-employee relation. Moreover, for a payroll to be utilized to disprove the employment of a person, it must contain a true and complete list of the employees. But, in this case, the testimonies of petitioners' witnesses admit that not all the names of the employees were reflected in the payroll.

In their Consolidated Reply, petitioners assert that "employees who were absent were naturally not included in the weekly payrolls." [4] But this simply emphasizes the obvious. Petitioners' payrolls do not contain the complete list of the employees, so that the payroll slips cannot be an accurate basis in determining who are or are not their employees. In addition, as the Solicitor General observes: "x x x x the payroll slips submitted by petitioners do not cover the entire period of nine years during which private respondent claims to have been employed by them, but only the periods from November 2 to November 29, 1986 and April 26 to May 30, 1987 x x x x It should be noted that petitioners repeatedly failed or refused to submit all the payroll slips covering the period during which private respondent claims to have been employed by them despite repeated directives from the Labor Arbiter x x x x" [5] In this regard, we can aptly apply the disputable presumption that evidence willfully suppressed would be adverse if produced. [6]

Petitioners further contend that the claim of Esita that he worked from seven o'clock in the morning to five o'clock in the afternoon, which is presumed to be continuous, is hardly credible because otherwise he would not have had time to tend his crops. [7] As against this positive assertion of Esita, it behooves petitioners to prove the contrary. It is not enough that they raise the issue of probability, nay, improbability, of the conclusions of public respondents based on the facts bared before them, for in case of doubt, the factual findings of the tribunal which had the opportunity to peruse the conflicting pieces of evidence should be sustained.

The petitioners point out that even granting *arguendo* that Esita was indeed a mechanic, he could never be a regular employee because his presence would be required only when there was need for repair. We cannot sustain this argument. This circumstance cannot affect the regular status of the employment of Esita. An employee who is required to remain on call in the employer's premises or so close thereto that he cannot use the time effectively and gainfully for his own purpose shall be considered as working while on call. [8] In sum, the determination of regular and casual employment [9] is not affected by the fact that the employee's regular presence in the place of work is not required, the more significant consideration being that the work of the employee is usually necessary or desirable in the business of the employer. More importantly, Esita worked for 9 years and, under the Labor Code, "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 that activity in which he is employed x x x x" [10]

The petitioners would give the impression that the repair of the ice plant and the renovation of the residence of Dr. Oplencia were voluntarily extended by Esita because "[r]espondent did it on their (sic) own." Unfortunately for petitioners, we cannot permit these baseless assertions to prevail against the factual findings of public respondents which went through the sanitizing process of a public hearing. The same observation may be made of the alleged inconsistencies in Esita's testimonies. Moreover, on the claim that Esita's construction work could not ripen into a regular employment in the ice plant because the construction work was only temporary and unrelated to the ice-making business, needless to say, the one month spent by Esita in construction is insignificant compared to his nine-year service as compressor operator in determining the status of his employment as such, and considering further that it was Dr. Oplencia who requested Esita to work in the construction of his house.

In allowing Esita to stay in the premises of the ice plant and permitting him to cultivate crops to augment his income, there is no doubt that petitioners should be commended; however, in view of the existence of an employer-employee relationship as found by public respondents, we cannot treat humanitarian reasons as justification for emasculating or taking away the rights and privileges of employees granted by law. Benevolence, it is said, does not operate as a license to circumvent labor laws. If petitioners were genuinely altruistic in extending to their employees privileges that are not even required by law, then there is no reason why they should not be required to give their employees what they are entitled to receive. Moreover, as found by public respondents, Esita was enjoying the same privileges granted to the other employees of petitioners, so that in thus

treating Esita, he cannot be considered any less than a legitimate employee of petitioners.

WHEREFORE, there being no grave abuse of discretion on the part of public respondents, the instant petition is DISMISSED. Accordingly, the restraining order we issued on 13 May 1991 is LIFTED.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.

[1] NLRC Case No. SRB IV-2-2206-89.

[2] GSIS v. Custodio, No. L-26170, 27 January 1969; 26 SCRA 658, 664.

[3] Nos. L-41182-3, 15 April 1988; 160 SCRA 171.

[4] Rollo, p. 81.

[5] Comment, p. 8.

[6] Sec. 5 (e), Rule 131, Rules of Court.

[7] Petition, p. 8; Rollo, p. 13.

[8] Sec. 5 (b), Rule I, Book III, Implementing Rules of the Labor Code.

[9] Art. 280 of the Labor Code provides: "The provisions of written agreements 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 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 activity exists."

[10] See second par of footnote 9.

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