

**ALGA MOHER INTERNATIONAL PLACEMENT SERVICES,
PETITIONER, VS. HON. DIEGO P. ATIENZA, CLETO T. VILLATUYA,
GERONIMO Q. QUADRA, AS COMMISSIONERS OF THE NATIONAL
LABOR RELATIONS COMM...**

G.R. Nos. 74610-11. September 30, 1988

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition seeks the annulment of the Decision dated March 10, 1986 of the National Labor Relations Commission (hereinafter referred to as the respondent Commission) affirming the joint Decision dated August 7, 1984 of the Philippine Overseas Employment Administration in BES Case No. 81-1202 entitled, "CLAUDIO M. MIRAFLORES, Complainant, versus MODERN SYSTEM CONTRACTING ESTABLISHMENT and ALGA MOHER INTERNATIONAL PLACEMENT SERVICES, Respondents" and BES Case No. 81-1206 entitled, "RAMON C. PONCE, Complainant, versus MODERN SYSTEM CONTRACTING ESTABLISHMENT and ALGA MOHER INTERNATIONAL PLACEMENT SERVICES, Respondents"; and the Resolution dated May 2, 1986 of the respondent Commission denying petitioner's motion for reconsideration.

The pertinent facts are as follows:

On March 18, 1981, Ramon C. Ponce and Claudio M. Miraflores entered into separate contracts of employment with the Modern System Contracting Establishment (hereinafter referred to as Modern System) through its agent, Alga Moher International Placement Services (hereinafter referred to as Alga Moher), a duly licensed recruitment and placement agency, after having paid the latter P3,000.00 each as placement fees. Under the terms and conditions of said contracts, Ponce was hired as a driver of light equipment with a basic monthly salary of US \$250.00 plus a monthly allowance of US\$75.00 for a period of two (2) years, while Miraflores was hired as an airconditioning technician with a basic monthly salary of US\$600.00 plus a monthly allowance of US\$75.00 also for a period of two (2) years. Dr. Lajili Salah, the representative of Modern System, personally conducted the interview and selection of Ponce and Miraflores.

Pursuant to their employment contracts, Ponce and Miraflores left for Saudi Arabia on March 31, 1981 where, for the first two weeks, Ponce worked as a cook while Miraflores worked as an airconditioning technician. Thereafter, Ponce was assigned to work as a heavy equipment operator and later, as a construction worker. Miraflores was assigned as a construction worker. Thinking that these reassignments constituted a breach of their contracts, Ponce and Miraflores reported the matter to Alga Moher. In due time, Modern System was apprised of the complaint and soon thereafter, it terminated the contracts of Ponce and Miraflores, detained them for one week, and repatriated them after giving their passports, plane tickets and salaries for the month of May, from which had been deducted the amounts of US\$100.00 (from Ponce's salary) and US\$200.00 (from Miraflores's salary).

Upon their arrival in the Philippines, Ponce filed a complaint for illegal dismissal, illegal deduction from wages, illegal exaction and breach of contract against Modern System and Alga Moher (BES Case No. 81-1206). A

similar complaint was filed by Miraflor (BES Case No. 81-1202). The two cases were consolidated and proceedings were held before Administrator Patricia A. Sto. Tomas of the Philippine Overseas Employment Administration (hereinafter referred to as POEA).

On August 7, 1984, the POEA rendered a joint decision (pp. 44 to 49, Rollo), the dispositive portion of which reads:

"WHEREFORE, the foregoing premises considered, judgment is hereby rendered in favor of the complainants and against the respondents, ordering the latter, jointly and severally to:

- Pay complainant Ramon C. Ponce the equivalent in Philippine currency, of the amount of FIVE THOUSAND FIVE HUNDRED US DOLLARS (US\$5,500.00), representing basic salaries for the unexpired portion of his contract of employment at the rate of exchange prevailing at the time of actual payment;
- Pay complainant Ramon C. Ponce ten percent (10%) of FIVE THOUSAND FIVE HUNDRED US DOLLARS (US\$5,500.00) by way of attorney's fees;
- Pay complainant Claudio M. Miraflor the equivalent in Philippine currency of the amount of SIX THOUSAND SIX HUNDRED US DOLLARS (US\$6,600.00) representing basic salaries for the unexpired portion of his contract of employment at the rate of exchange prevailing at the time of actual payment;
- Pay complainant Claudio M. Miraflor ten percent (10%) of SIX THOUSAND SIX HUNDRED US DOLLARS (US\$6,600.00) by way of attorney's fees.

SO ORDERED."

On August 31, 1984, Modern System and Alga Moher appealed to the respondent Commission which later affirmed the POEA's decision in its decision dated March 10, 1986 (pp. 60 to 63, Rollo). A motion for reconsideration was filed by Modern System and Alga Moher but the same was denied by the respondent Commission in its Resolution dated May 2, 1986 (p. 72, Rollo) Hence, the instant petition filed only by Alga Moher.

The issues submitted by petitioner, Alga Moher, to this Court for resolution are:

- Whether or not petitioner negotiated the contracts of employment of private respondents, Ponce and Miraflor, and is liable thereunder;
- Whether or not private respondents were illegally dismissed;
- Whether or not Article 280 of the Labor Code should be applied in determining the monetary benefits to be awarded to the private respondents.

It is clear from the records that sometime in March, 1981, the services of the petitioner were sought by Modern System to recruit Filipino workers for overseas employment. This fact is admitted by petitioner in paragraph 11.2 of the instant petition. Petitioner is, therefore, the duly authorized local agent of Modern System.

This Court gives no credence to the petitioner's assertion that it did not negotiate the employment of the private respondents by Modern System. This defense was never raised in petitioner's "Answer/Comment" (pp. 42 to 43, Rollo) to the complaints filed by private respondents with the POEA. It merely averred that the dismissal of private respondents was legal and valid because they were found unfit for their work and their dismissal was effected while they were still in probation. Neither did the petitioner claim such a defense in its motion for reconsideration (pp. 64 to 66, Rollo) and supplemental motion for reconsideration (pp. 67 to 71, Rollo) of the respondent Commission's decision of March 10, 1986. Withal, the joint affidavit of petitioner's witnesses, Pedro M. Narvaez and Danilo B. Atienza, state that they and the private respondents were hired by Modern System

through the herein petitioner.

As aptly observed by the Solicitor General, the present allegation of petitioner that it did not have anything to do with the employment of the private respondents by Modern System is clearly an afterthought concocted by petitioner so that it can avoid its legal obligation to private respondents.

Rule V, Book I of the Omnibus Rules Implementing the Labor Code defines the duties and/or obligations of a duly licensed placement and recruiting agency. Section 2(e) of the said Rule requires a private employment agency to assume all responsibilities for the implementation of the contract of employment of an overseas worker. Section 10(a)(2) also of the same Rule provides that a private employment agency can be sued jointly and severally with the principal or foreign based employer for any violation of the recruitment agreement or the contract of employment.

The new Rules and Regulations Governing Overseas Employment (1985) promulgated by the Governing Board of the POEA provides in Book II, Rule II, Section 1(d)(3) that a private employment agency shall assume joint and solidary liability with the employer for all claims which may arise in connection with the implementation of a contract of employment.

It is clear, therefore, that the petitioner is jointly and solidarily liable with the overseas employer, Modern System, of the private respondents.

In finding that the private respondents were illegally dismissed, the POEA, in its decision of August 7, 1984 (p. 48, Rollo), said:

"Complainants herein were clearly illegally dismissed. In the first place, their contracts were terminated after two months, despite the fact that the parties agreed on a period of two years. Furthermore, respondents' defense to the effect that complainants were not found qualified for the position for which they were hired does not lie, considering that complainants were made to perform tasks alien to the positions stated in their contract, and considering, further that complainants were made to undergo rigid interview and trade tests before they were deployed."

On the same point, the respondent Commission in its decision dated March 10, 1986 affirming that of the POEA (p. 62, Rollo), said:

"The respondents contend on appeal, as they did below, that the complainants' services were terminated during the probationary period of their employment (citing the applicable provisions of their contracts) allegedly because they 'were not fit to the positions they were hired for and to any other position in the company.' The fallacy of this argument is immediately discernible when we consider the undisputed fact that the complainants were not given the chance to perform the work for which they had been hired, as clearly demonstrated above.

Moreover, the respondents have not proven their allegation concerning the complainants' unfitness for the jobs for which they had been contracted. All they have managed to say is that the complainants were unfit, without presenting any evidence to show why and how this crucial judgment was arrived at.

The respondents' such contention, in fact, cannot stand close scrutiny. Before he worked overseas, complainant Ponce had some five years' experience as a cargo truck driver and a dump truck, payloador and grader operator. He was interviewed and subjected to a trade test by the respondents' representative before he was hired, and he evidently passed the same, or else he would not have obtained the job he applied for. In the case of complainant Miraflor, he had been an airconditioning technician since 1968, and he was subjected to a lengthy interview by a representative of the respondents before he was hired for overseas work. Obviously, his interview was also successful."

Petitioner assails these findings of the POEA and the respondent Commission, arguing as follows:

- Private respondents were not illegally dismissed because their dismissal was made during their probation period after they were found unfit for the positions they were hired, as well as the other positions offered to them. Petitioner invokes Articles 1 and 4 of the Employment Contracts (pp. 29 to 35, Rollo), providing for a probation period of three (3) months for private respondents.
- Private respondents were given a chance to perform the duties of the positions they applied for. Petitioner invokes the admissions made by private respondents during the hearing of the cases.

The foregoing contentions of the petitioner are not impressed with merit. Firstly, the findings of the POEA and respondent Commission that the private respondents were illegally dismissed being supported by substantial evidence is entitled not only to respect but also to the stamp of finality. Secondly, the respondent Commission correctly rejected petitioner's assertion that private respondents were unfit because (1) Petitioner failed to present any evidence to show why and how this crucial judgment was arrived at; and (2) Petitioner's assertion cannot stand against the findings that before he worked overseas, Ponce had five years experience as a cargo truck and dump truck driver and payloader and a grader operator. Miraflor had been an airconditioning technician since 1968. Moreover, before the private respondents were hired, they were lengthily interviewed by a representative of the foreign employer, Modern System. They must have passed, otherwise they would not have been hired. They must have also been subjected to a trade test because this is one of the requirements for employment abroad. Thirdly, the private respondents were not given sufficient time to prove their fitness for the positions they were hired. Two weeks for this purpose is not enough.

As aptly observed by the Solicitor General, it is more plausible that the employment of private respondents was prematurely terminated not because they were unfit but because their foreign employer, Modern System, resented their act of reporting to the petitioner herein, Alga Moher, that their re-assignment to work alien to the positions they applied for constituted breach of their employment contracts.

Article 279 of the Labor Code provides:

"Art. 279. Security of Tenure.- In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time of reinstatement."

This law was correctly applied by the POEA and the respondent Commission because private respondents were found to have been illegally dismissed by their foreign employer, Modern System. The fact that they were dismissed during the probationary period stipulated in their contracts is immaterial. Were they not illegally dismissed, they could have completed their two-year contract. In *Manila Hotel Corporation vs. National Labor Relations Commission and Renato L. Cruz*, No. 53453, January 22, 1986, 141 SCRA 169, We held:

"There is no dispute that as a probationary employee, private respondent had but a limited tenure. Although on probationary basis, however, Cruz still enjoys the constitutional protection on security of tenure. During his tenure of employment therefore, or before his contract expires, respondent Cruz cannot be removed except for cause as provided for by law."

All doubts in the implementation of the provisions of the Labor Code, including its implementing rules and regulations, should be resolved in favor of labor (Chapter I, Article 4 of the Labor Code of the Philippines, as amended.)

The award of attorney's fees to private respondents is MODIFIED to read as follows:

"x x x

2. Pay complainant Ramon C. Ponce the equivalent in Philippine currency of ten percent (10%) of FIVE THOUSAND FIVE HUNDRED US DOLLARS (US\$5,500.00) by way of attorney's fees at the rate of exchange prevailing at the time of actual payment;

x x x

4. Pay complainant Claudio M. Miraflor the equivalent in Philippine currency, of ten percent (10%) of SIX THOUSAND SIX HUNDRED US DOLLARS (US\$6,600.00) by way of attorney's fees at the rate of exchange prevailing at the time of actual payment."

ACCORDINGLY, the petition is hereby dismissed with costs against petitioner. The Decision of respondent National Labor Relations Commission dated March 10, 1986 as well as its Resolution dated May 2, 1986 are AFFIRMED, subject to the MODIFICATION abovementioned. The temporary restraining order issued on July 28, 1986 is LIFTED.

This decision is immediately executory.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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