

**ELIZABETH ASIM, PRIMITIVA MAESTRA, ESTANISLAO OBLIGADO,
EDUARDO DUMABILDO, ROGELIO MISOLES, ZENAIDA TORALBA,
EFREN VICENTE, DIMAS CIRILO, MELCHOR ALFADA, JOVITA
MONTILLA, ROMEO ...**

G.R. Nos. 75063-64. June 30, 1988

Ponente: CORTES, J.

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CORTES, J.:

Acting on the complaints of petitioners against Continental Cement Corporation/Celia Maningas for illegal dismissal, non-payment of wages, emergency cost of living allowance, 13th month pay, rest day and holiday premiums, and for underpayment of salary, Labor Arbiter Luciano P. Aquino (Regional Arbitration Branch No. III, San Fernando, Pampanga), in a decision dated August 17, 1983, directed Continental Cement Corporation (hereafter referred to simply as CONTINENTAL) to reinstate petitioners and to pay their salary differential, unpaid wages, overtime pay, emergency cost of living allowance, 13th month pay and holiday premiums. CONTINENTAL appealed to the National Labor Relations Commission which, in its Resolution dated December 5, 1984, affirmed the decision of the Labor Arbiter. On motion for reconsideration filed by CONTINENTAL, the NLRC reconsidered its earlier ruling and ordered the remand of the case to the Regional Arbitration Branch No. III for further proceedings to give CONTINENTAL and Maningas opportunity to present their evidence in view of "non-observance of certain basic requirements of due process."

After due hearing, the Labor Arbiter rendered another decision on August 15, 1985 ordering Celia Maningas to pay the benefits due to the petitioners. CONTINENTAL was absolved from liability as it was found that no employer-employee relationship existed between the company and the petitioners. Petitioners appealed to the NLRC which, on December 19, 1985, dismissed the appeal for lack of merit. On July 12, 1986, petitioners filed the instant special civil action for certiorari which this Court by resolution on May 4, 1987 gave due course.

There is no question that petitioners have not received benefits legally due them. The question is who between Celia Maningas and CONTINENTAL is liable to pay the petitioners.

The Labor Arbiter and the National Labor Relations Commission found as fact that Maningas, and not CONTINENTAL, is the employer of petitioners. Consequently, Maningas was held liable, while CONTINENTAL was absolved from any liability.

Petitioners, however, insist that CONTINENTAL is their employer; that they have been in the employ of the company even prior to 1982 when CONTINENTAL entered into a service contract with Maningas; that Maningas is a "labor only contractor" and therefore, pursuant to Articles 106 and 109 of the Labor Code, CONTINENTAL is deemed the employer of petitioners.

This Court has repeatedly ruled that whether or not an employer-employee relationship exists between the parties is a question of fact (*RJL Martinez Fishing Corp. v. NLRC*, G.R. Nos. 63550-51, January 31, 1984, 127 SCRA

454). Findings of facts of the National Labor Relations Commission are accorded by this Court not only respect but finality, if supported by substantial evidence.

We have painstakingly gone over the record and found that the findings of the Labor Arbiter and the NLRC rest on substantial evidence on record. The findings of the Labor Arbiter, quoted with approval by the National Labor Relations Commission, are as follows:

. . . (I)t is our well-discerned opinion that there exists no employer-employee relationship between the petitioners and respondent Continental Cement Corporation. The evidence on record convincingly shows that the abovenamed petitioners are employees of Celia Maningas, the independent contractor. It is undoubtedly clear that the respondent Continental Cement Corporation never had any participation directly or indirectly in the hiring of said petitioners. All wages or salaries of petitioners were fixed and paid by said independent contractor. Neither (did) respondent corporation exercise any control and supervision over the petitioners in their employment. All these managerial prerogatives were exclusively vested and exercised by respondent Celia Maningas. In fact, it is categorically stated in the Service Contract, Paragraph 5 thereof, that the workers assigned by the contractor at the Company's Plant are in no case employees of the company in any manner whatsoever.

Anent the IDs bearing the name of the respondent Continental Cement Corporation, the same were issued to the petitioners merely for the purpose of entry to the premises of respondent corporation and not in any manner establishing an employer-employee relationship between said parties.

Moreover, the 'Memorandum of Agreement' between the petitioners and the independent contractor Celia Maningas erases all doubts that said Celia Maningas is the employer of the petitioners and that the petitioners themselves acknowledged Celia Maningas as their employer.

The Supreme Court in the case of *Shipside, Inc. vs. National Labor Relations Commission, et al.* (No. L-50358, November 2, 1982) succinctly ruled:

In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the power to control the employee's conduct—although the latter is the most important element.

Likewise, in the case of *American President Lines vs. Clave, NLRC, et al.* (No. L-51641, June 29, 1982) the Highest Tribunal rendered a decision of the same tenor.

Viewed in the light of the foregoing findings and jurisprudence, we hold respondent Celia Maningas as the employer of the petitioners and to be liable for all the money claims due the petitioners as mentioned in the decision dated August 17, 1983, except those who are signatories to the Memorandum of Agreement namely Cresencia Paredes, Francisca de Guzman, Elizabeth Asim, Erlinda Morales, Zenaida Mangahas, Pacita Beduya, Erlinda Garcia, Leticia Omega, Leonida Punzalan, Laureta Rafanan and Violeta Apillado, who discharged and released said respondent Celia Maningas of their claims.

Anent petitioners' claim that they have been in the employ of CONTINENTAL since 1977, prior to the execution of the Service Contract between CONTINENTAL and Maningas in 1982, suffice it to say that the Complaint itself signed by Elizabeth Asim and which was filed before the Regional Arbitration Branch No. III, belies their claim. The complaint specifically states that petitioners' date of employment was "September 27, 1982."

Having determined that no employer-employee relationship existed between the petitioners and CONTINENTAL, the Labor Arbiter and the NLRC correctly ruled that the cannot be charged of having illegally dismissed petitioners.

WHEREFORE, considering that the National Labor Relations Commission did not act without or in excess of jurisdiction or with grave abuse of discretion, the petition is hereby DISMISSED.

SO ORDERED.

Fernan (Chairman), Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., on leave.

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