

MAKATI HABERDASHERY, INC., JORGE LEDESMA AND CECILIO G. INOCENCIO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, CEFERINA J. DIOSANA (LABOR ARBITER, DEPARTMENT OF LABOR ...

G.R. Nos. 83380-81. November 15, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This petition for certiorari involving two separate cases filed by private respondents against herein petitioners assails the decision of respondent National Labor Relations Commission in NLRC CASE No. 7-2603-84 entitled "Sandigan Ng Manggagawang Pilipino (SANDIGAN)-TUCP etc., et al. v. Makati Haberdashery and/or Toppers Makati, et al." and NLRC CASE No. 2-428-85 entitled "Sandigan Ng Manggagawang Pilipino (SANDIGAN)-TUCP etc., et al. v. Toppers Makati, et al.", affirming the decision of the Labor Arbiter who jointly heard and decided aforesaid cases, finding: (a) petitioners guilty of illegal dismissal and ordering them to reinstate the dismissed workers and (b) the existence of employer-employee relationship and granting respondent workers by reason thereof their various monetary claims.

The undisputed facts are as follows:

Individual complainants, private respondents herein, have been working for petitioner Makati Haberdashery, Inc. as tailors, seamstress, sewers, basters (manlililip) and "plantsadoras". They are paid on a piece-rate basis except Maria Angeles and Leonila Serafina who are paid on a monthly basis. In addition to their piece-rate, they are given a daily allowance of three (P3.00) pesos provided they report for work before 9:30 a.m. everyday.

Private respondents are required to work from or before 9:30 a.m. up to 6:00 or 7:00 p.m. from Monday to Saturday and during peak periods even on Sundays and holidays.

On July 20, 1984, the Sandigan ng Manggagawang Pilipino, a labor organization of the respondent workers, filed a complaint docketed as NLRC NCR Case No. 7-2603-84 for (a) underpayment of the basic wage; (b) underpayment of living allowance; (c) non-payment of overtime work; (d) non-payment of holiday pay; (e) non-payment of service incentive pay; (f) 13th month pay; and (g) benefits provided for under Wage Orders Nos. 1, 2, 3, 4 and 5.[1]

During the pendency of NLRC NCR Case No. 7-2603-84, private respondent Dioscoro Pelobello left with Salvador Rivera, a salesman of petitioner Haberdashery, an open package, which was discovered to contain a "jusi" barong tagalog. When confronted, Pelobello replied that the same was ordered by respondent Casimiro Zapata for his customer. Zapata allegedly admitted that he copied the design of petitioner Haberdashery. But in the afternoon, when again questioned about said barong, Pelobello and Zapata denied ownership of the same. Consequently a memorandum was issued to each of them to explain on or before February 4, 1985 why no action should be taken against them for accepting a job order which is prejudicial and in direct competition with the

business of the company.[2] Both respondents allegedly did not submit their explanation and did not report for work.[3] Hence, they were dismissed by petitioners on February 4, 1985. They countered by filing a complaint for Illegal dismissal docketed as NLRC NCR Case No. 2-428-85 on February 5, 1985.[4]

On June 10, 1986, Labor Arbiter Ceferina J. Diosana rendered judgment, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in NLRC NCR Case No. 2-428-85 finding respondents guilty of illegal dismissal and ordering them to reinstate Dioscoro Pelobello and Casimiro Zapata to their respective or similar positions without loss of seniority rights, with full backwages from July 4, 1985 up to actual reinstatement. The charge of unfair labor practice is dismissed for lack of merit.

"In NLRC NCR Case No. 7-26030-84, the complainants' claims for underpayment re violation of the minimum wage law is hereby ordered dismissed for lack of merit.

"Respondents are hereby found to have violated the decrees on the cost of living allowance, service incentive leave pay and the 13th Month Pay. In view thereof, the economic analyst of the Commission is directed to compute the monetary awards due each complainant based on the available records of the respondents retroactive as of three years prior to the filing of the instant case.

"SO ORDERED."[5]

From the foregoing decision, petitioners appealed to the NLRC. The latter on March 30, 1988 affirmed said decision but limited the backwages awarded to Dioscoro Pelobello and Casimiro Zapata to only one (1) year.[6]

After their motion for reconsideration was denied, petitioners filed the instant petition raising the following issues:

I

THE SUBJECT DECISIONS ERRONEOUSLY CONCLUDED THAT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN PETITIONER HABERDASHERY AND RESPONDENTS WORKERS.

II

THE SUBJECT DECISIONS ERRONEOUSLY CONCLUDED THAT RESPONDENTS WORKERS ARE ENTITLED TO MONETARY CLAIMS DESPITE THE FINDING THAT THEY ARE NOT ENTITLED TO MINIMUM WAGE.

III

THE SUBJECT DECISIONS ERRONEOUSLY CONCLUDED THAT RESPONDENTS PELOBELLO AND ZAPATA WERE ILLEGALLY DISMISSED.[7]

The first issue which is the pivotal issue in this case is resolved in favor of private respondents. We have repeatedly held in countless decisions that the test of employer-employee relationship is four-fold: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct. It is the so-called "control test" that is the most important element.[8]

This simply means the determination of whether the employer controls or has reserved the right to control the employee not only as to the result of the work but also as to the means and method by which the same is to be accomplished.[9]

The facts at bar indubitably reveal that the most important requisite of control is present. As gleaned from the operations of petitioner, when a customer enters into a contract with the haberdashery or its proprietor, the latter

directs an employee who may be a tailor, pattern maker, sewer or "plantsadora" to take the customer's measurements, and to sew the pants, coat or shirt as specified by the customer. Supervision is actively manifested in all these aspects -- the manner and quality of cutting, sewing and ironing.

Furthermore, the presence of control is immediately evident in this memorandum issued by Assistant Manager Cecilio B. Inocencio, Jr. dated May 30, 1981 addressed to Topper's Makati Tailors which reads in part:

"4. Effective immediately, new procedures shall be followed:

"A. To follow instruction and orders from the undersigned, Roger Valderrama, Ruben Delos Reyes and Ofel Bautista. Other than this person (sic) must ask permission to the above mentioned before giving orders or instructions to the tailors.

"B. Before accepting the job orders tailors must check the materials, job orders, due dates and other things to maximize the efficiency of our production. The materials should be check (sic) if it is match (sic) with the sample, together with the number of the job order.

"C. Effective immediately all job orders must be finished one day before the due date. This can be done by proper scheduling of job order and if you will cooperate with your supervisors. If you have many due dates for certain day, advise Ruben or Ofel at once so that they can make necessary adjustment on due dates.

"D. Alteration - Before accepting alteration person attending on customs (sic) must ask first or must advise the tailors regarding the due dates so that we can eliminate what we call 'Bitin'.

"E. If there is any problem regarding supervisors or co-tailor inside our shop, consult with me at once settle the problem. Fighting inside the shop is strictly prohibited. Any tailor violating this memorandum will be subject to disciplinary action.

"For strict compliance."[10]

From this memorandum alone, it is evident that petitioner has reserved the right to control its employees not only as to the result but also the means and methods by which the same are to be accomplished. That private respondents are regular employees is further proven by the fact that they have to report for work regularly from 9:30 a.m. to 6:00 or 7:00 p.m. and are paid an additional allowance of P3.00 daily if they report for work before 9:30 a.m. and which is forfeited when they arrive at or after 9:30 a.m.[11]

Since private respondents are regular employees, necessarily the argument that they are independent contractors must fail. As established in the preceding paragraphs, private respondents did not exercise independence in their own methods, but on the contrary were subject to the control of petitioners from the beginning of their tasks to their completion. Unlike independent contractors who generally rely on their own resources, the equipment, tools, accessories and paraphernalia used by private respondents are supplied and owned by petitioners. Private respondents are totally dependent on petitioners in all these aspects.

Coming now to the second issue, there is no dispute that private respondents are entitled to the Minimum Wage as mandated by Section 2(g) of Letter of Instruction No. 829, Rules Implementing Presidential Decree No. 1614 and reiterated in Section 3(f), Rules Implementing Presidential Decree 1713 which explicitly states that, "All employees paid by the result shall receive not less than the applicable new minimum wage rates for eight (8) hours work a day, except where a payment by result rate has been established by the Secretary of Labor x x x ."[12] No such rate has been established in this case.

But all these notwithstanding, the question as to whether or not there is in fact an underpayment of minimum wages to private respondents has already been resolved in the decision of the Labor Arbiter where he stated:

"Hence, for lack of sufficient evidence to support the claims of the complainants for alleged violation of the minimum wage, their claims for underpayment re violation of the Minimum Wage Law under Wage Orders Nos. 1, 2, 3, 4, and 5 must perform fall." [13]

The records show that private respondents did not appeal the above ruling of the Labor Arbiter to the NLRC; neither did they file any petition raising that issue in the Supreme Court. Accordingly, insofar as this case is concerned, that issue has been laid to rest. As to private respondents, the judgment may be said to have attained finality. For it is a well-settled rule in this jurisdiction that "an appellee who has not himself appealed cannot obtain from the appellate court, any affirmative relief other than the ones granted in the decision of the court below." [14]

As a consequence of their status as regular employees of the petitioners, they can claim cost of living allowance. This is apparent from the provision defining the employees entitled to said allowance, thus: "... All workers in the private sector, regardless of their position, designation or status, and irrespective of the method by which their wages are paid." [15]

Private respondents are also entitled to claim their 13th Month Pay under Section 3(e) of the Rules and Regulations Implementing P.D. No. 851 which provides:

"Section 3. Employers covered. - The Decree shall apply to all employers except to:

x x x x x x x x

"e) Employers of those who are paid on purely commission, boundary, or task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall be covered by this issuance insofar as such workers are concerned." (Underscoring supplied.)

On the other hand, while private respondents are entitled to Minimum Wage, COLA and 13th Month Pay, they are not entitled to service incentive leave pay because as piece-rate workers being paid at a fixed amount for performing work irrespective of time consumed in the performance thereof, they fall under one of the exceptions stated in Section 1(d), Rule V, Implementing Regulations, Book III, Labor Code. For the same reason private respondents cannot also claim holiday pay (Section 1(e), Rule IV, Implementing Regulations, Book III, Labor Code).

With respect to the last issue, it is apparent that public respondents have misread the evidence, for it does show that a violation of the employer's rules has been committed and the evidence of such transgression, the copied barong tagalog, was in the possession of Pelobello who pointed to Zapata as the owner. When required by their employer to explain in a memorandum issued to each of them, they not only failed to do so but instead went on AWOL (absence without official leave), waited for the period to explain to expire and for petitioner to dismiss them. They thereafter filed an action for illegal dismissal on the far-fetched ground that they were dismissed because of union activities. Assuming that such acts do not constitute, abandonment of their jobs as insisted by private respondents, their blatant disregard of their employer's memorandum is undoubtedly an open defiance to the lawful orders of the latter, a justifiable ground for termination of employment by the employer expressly provided for in Article 283(a) of the Labor Code as well as a clear indication of guilt for the commission of acts inimical to the interests of the employer, another justifiable ground for dismissal under the same Article of the Labor Code, paragraph (c). Well established in our jurisprudence is the right of an employer to dismiss an employee whose continuance in the service is inimical to the employer's interest. [16]

In fact the Labor Arbiter himself to whom the explanation of private respondents was submitted gave no credence

to their version and found their excuses that said barong tagalog was the one they got from the embroiderer for the Assistant Manager who was investigating them, unbelievable.

Under the circumstances, it is evident that there is no illegal dismissal of said employees. Thus, We have ruled that:

"No employer may rationally be expected to continue in employment a person whose lack of morals, respect and loyalty to his employer, regard for his employer's rules, and appreciation of the dignity and responsibility of his office, has so plainly and completely been bared.

"That there should be concern, sympathy, and solicitude for the rights and welfare of the working class, is meet and proper. That in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writings should be resolved in the former's favor, is not an unreasonable or unfair rule. But that disregard of the employer's own rights and interests can be justified by that concern and solicitude is unjust and unacceptable." (Stanford Microsystems, Inc. v. NLRC, 157 SCRA 414-415 [1988]).

The law in protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer.[17] More importantly, while the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will automatically be decided in favor of labor.[18]

Finally, it has been established that the right to dismiss or otherwise impose disciplinary sanctions upon an employee for just and valid cause, pertains in the first place to the employer, as well as the authority to determine the existence of said cause in accordance with the norms of due process.[19]

There is no evidence that the employer violated said norms. On the contrary, private respondents who vigorously insist on the existence of employer-employee relationship, because of the supervision and control of their employer over them, were the very ones who exhibited their lack of respect and regard for their employer's rules.

Under the foregoing facts, it is evident that petitioner Haberdashery had valid grounds to terminate the services of private respondents.

WHEREFORE, the decision of the National Labor Relations Commission dated March 30, 1988 and that of the Labor Arbiter dated June 10, 1986 are hereby modified. The complaint filed by Pelobello and Zapata for illegal dismissal docketed as NLRC NCR Case No. 2-428-85 is dismissed for lack of factual and legal bases. Award of service incentive leave pay to private respondents is deleted.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 22.

[2] Rollo, pp. 105-106.

[3] Rollo, p. 27.

[4] Rollo, p. 23.

[5] Rollo, pp. 29-30.

[6] Rollo, pp. 49-50.

[7] Rollo, p. 8.

[8] Bautista v. Inciong, G.R. No. 52824, March 16, 1988; Continental Marble Corporation, et al. v. NLRC, G.R. No. 43825, May 9, 1988; Asim, et al. v. Castro, G.R. No. 75063-64, June 30, 1988; Brotherhood Labor Unity Mov't in the Philippines v. Zamora, 147 SCRA 49 [1987]; Investment Planning Corp. of the Phil. v. Social Security System, 21 SCRA 924 [1967]; Mafinco v. Ople, 70 SCRA 139 [1976]; Rosario Brothers v. Ople, L-53590, 131 SCRA 72 [1984]; Shipside, Inc. v. NLRC, G.R. No. 50358, 118 SCRA 99 [1982]; American President Lines v. Clave, et al., G.R. No. 51641, 114 SCRA 826 [1982].

[9] Social Security System v. Court of Appeals, 156 SCRA 383 [1987].

[10] Rollo, pp. 80-81.

[11] Rollo, p. 44.

[12] Rules and Regulations Implementing P.D. 928.

[13] Rollo, p. 29.

[14] Alba v. Santander, G.R. No. L-28409, April 15, 1988.

[15] Section 3, Rules Implementing Wage No. 1; Section 1 Chapter 3 of the Rules Implementing Wage No. 2; Section 1 Chapter 3 of the Rules Implementing Wage No. 5.

[16] San Miguel Corporation v. NLRC, 142 SCRA 377 [1986].

[17] Manila Trading & Supply Co. v. Zulueta, 69 Phil. 485 [1939]; Allied Banking Corp. v. Castro, 156 SCRA 789, 800 [1987].

[18] Sosito v. Aguinaldo Development Corp., 156 SCRA 392, 396 [1987].

[19] Richardson v. Demetriou, 142 SCRA 505 [1986].

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