620 Phil. 737

THIRD DIVISION

[G.R. No. 185094, November 25, 2009]

MASONIC CONTRACTOR, INC. AND MELVIN BALAIS/AVELINO REYES, PETITIONERS, VS. MAGDALENA MADJOS, ZENAIDA TIAMZON, AND CARMELITA RAPADAS, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

This is a petition for review on *certiorari* assailing the July 18, 2008 Decision[1] of the Court of Appeals (CA), as well as its October 23, 2008 Resolution,[2] in CA-G.R. SP No. 101023. The CA, in its assailed decision and resolution, reversed and set aside the Decision[3] promulgated by the National Labor Relations Commission (NLRC) on February 6, 2007, as well as the December 16, 2004 Decision[4] of the Labor Arbiter (LA), rendered in favor of herein petitioners.

First, the facts:

Respondents Magdalena Madjos, Zenaida Tiamzon and Carmelita Rapadas were employed sometime in 1991 as all-around laborers (driver/sweeper/ "*taga-libing*"/grass-cutter) by Masonic Contractor, Inc. (MCI). Each of them received an initial daily wage of P165.00 and were required to report for work from 7:00 a.m. to 4:00 p.m. Three years thereafter, MCI increased their wages by P15.00 per day[5] but not without earning the ire of Melvin Balais, president of MCI.[6]

Sometime in 2004, Balais told Madjos, Tiamzon and Rapadas, along with nine (9) other employees, to take a two-day leave. When they reported for work two days thereafter, they were barred from entering the work premises and were informed that they had already been replaced by other workers.[7] This prompted Madjos and her co-workers to file a complaint against herein petitioners for illegal dismissal and for non-payment of overtime pay, holiday pay, 13th month pay, and damages.

In their Position Paper dated April 12, 2004,[8] respondents averred that they were regular employees of MCI who were summarily dismissed from their jobs contrary to the substantive and procedural requirements of law.

Petitioners, for their part, denied being the direct employer of respondents.[9] Essentially, they argued that MCI had maintenance contracts with different memorial park companies and that, over the years, they had engaged the services of a certain Luz Malibiran to provide them with the necessary manpower depending on MCI's volume of work.[10]

On December 16, 2004, LA Aliman Mangandog rendered a Decision,[11] dismissing

the complaint for lack of merit. The LA ratiocinated that Madjos, Tiamzon and Rapadas failed to present any evidence to prove that MCI had control over the means and methods in the performance of their work. The LA gave more credence to Malibiran's affidavit,[12] pertinent portions of which read:

1. Ako at ang mga nagsumbong sa SSS laban sa Masonic Contractor's, Inc., komokontrata lamang ng mga gawaing (sic) ng nasabing kompanya sa loob ng Loyola Memorial Park at ang aming mga ginawa ay binabayaran ng buo na siya naman naming pinagpaparti-partihan.

2. Ako at ang mga nagsumbong sa SSS, sa kadahilanang alam naming na (sic) hindi kami empleyado ng kahit sinumang kompanya o pagawaan ay nag-usap-usap at nagkasundo na kami na mismo sa aming sarili ang magpalista sa SSS at magbayad ng kontribusyon kung gusto naming na (sic) magkaroon ng benepisyo pagdating ng panahon.

3. Alam naming lahat na kami ay hindi empleyado ng Masonic Contractor's[,] Inc., kung kaya alam naming (sic) na ang nasabing kompanya ay walang pananagutan na kami ay ipalista sa SSS bilang empleyado.

4. Ang mga nagsumbong sa SSS ay umalis at umayaw na lang ng walang paalam kung kaya kaming mga natira ay napilitang maghanap ng ibang makakasama sa pangongontrata. Ang aming pangongontrata sa Masonic Contractor's[,] Inc. ay isang pakiusap lamang sa nasabing kompanya upang kami ay magkaroon ng sariling pinagkakakitaan upang matugunan ang aming pang-araw-araw na pangangailangan.

5. Ang salaysay na ito ay aking ginawa para patunayan ang mga nakasaaad dito ay pawang totoo at upang malaman ng tang[g]apan ng SSS na walang pagkukulang ang Masonic Contractor's[,] Inc.[13]

On appeal, the NLRC affirmed the LA's ruling. Respondents' motion for reconsideration was, likewise, denied.

On review, the CA reversed the findings of the NLRC and the LA. The CA reasoned that the NLRC erroneously imposed upon the three complainants the burden of proving that they were employees, when it was the employer and/or the contractor which should have been tasked with the onus to prove that it had substantial capital, investment, tools, etc. to disprove the allegation that it was engaged in labor-only contracting.[14] In contrast to the NLRC's ruling, the CA found that an employer-employee relationship existed between herein petitioners and respondents, and that the latter were illegally terminated from their work.

The dispositive portion of the July 18, 2008 Decision of the CA states:

> WHEREFORE, the petition is GRANTED. The assailed dispositions are ANNULLED and SET ASIDE. Masonic Contractor, Inc. is ORDERED to reinstate Petitioners Magdalena Madjos, Carmelita Rapadas, and Zenaida Tiamzon or, in the event that reinstatement is no longer feasible, to pay each of them separation pay. Masonic Contractor, Inc. is also DIRECTED to pay the Petitioners full backwages and other monetary benefits computed from the time of their dismissal up to the time of actual reinstatement or up to the finality of this decision, if reinstatement is not possible. No costs.
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> SO ORDERED.[15]

Petitioners now come to this Court *via* a Rule 45 petition, contending that the CA committed a reversible error in finding that they were engaged in labor-only contracting and for holding them liable for respondents' dismissal.

Central to the disposition of the case is a determination of whether respondents are employees of MCI.

We answer in the affirmative.

In "*Brotherhood" Labor Unity Movement of the Philippines v. Hon. Zamora*, the Court explained:

> In determining the existence of an employer-employee relationship, the elements that are generally considered are the following: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. It is the so-called "control test" that is the most important element.[16]

The existence of an employer-employee relationship is a question of fact which should be supported by substantial evidence.[17]

Petitioners' defense that they merely contracted the services of respondents through Malibiran fails to persuade us. The facts of this case show that respondents have been under the employ of MCI as early as 1991. They were hired not to perform a specific job or undertaking. Instead, they were employed as all-around laborers doing varied and intermittent jobs, such as those of drivers, sweepers, gardeners, and even undertakers or *tagalibing,* until they were arbitrarily terminated by MCI in 2004. Their wages were paid directly by MCI, as evidenced by the latter's payroll summary,[18] belying its self-serving and unsupported contention that it paid directly to Malibiran for respondents' services. Respondents had identification cards or gate passes issued not by Malibiran, but by MCI,[19] and were required to wear uniforms bearing MCI's emblem or logo when they reported for work.[20]

It is common practice for companies to provide identification cards to individuals not