537 Phil. 664

FIRST DIVISION

[G.R. NO. 148490, November 22, 2006]

7K CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, RENE A. CORONA, AND ALEX B. CATINGAN,RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 56597 dated September 29, 2000 as well as its Resolution[2] dated May 25, 2001.

The antecedents are as follows:

In February of 1997, 7K Corporation (petitioner) and Universal Janitorial and Allied Services (Universal) entered into a service contract where Universal bound itself to provide petitioner with drivers at the rate of P4,637.00 per driver a month.

Sometime in March and April of 1997, Rene A. Corona and Alex B. Catingan (private respondents) were interviewed by petitioner. Corona then started working with petitioner on March 7, 1997 while Catingan started on April 11, 1997. Pursuant to the service contract, petitioner paid Universal the sum of P4,637.00 per driver. As to overtime pay however, petitioner directly paid the private respondents.

A controversy arose when the overtime paid by the accounting department of petitioner was short of the actual overtime rendered by the private respondents. Private respondents' time- cards reflected overtime of up to 70 hours, however, the accounting personnel reduced them to only 20 hours. After their grievances were repeatedly ignored, respondents filed separate complaints for illegal dismissal, payment of salary differentials, unpaid overtime, and reinstatement with backwages, against Universal and/or petitioner before the Labor Arbiter (LA). The cases, docketed as RAB-11-11-01127-97 and RAB-11-12-01138-97, were consolidated and tried jointly.[3] Only petitioner and the private respondents filed their position papers.[4]

On November 20, 1998, LA Antonio M. Villanueva rendered a Decision declaring Universal as the employer of the private respondents. He also held that the respondents were illegally dismissed, thus entitled to backwages and separation pay. He gave weight to the service contract between petitioner and Universal which provided that:

> The Contractor [Universal] shall continue to be the employer of the workers assigned to the client's [petitioner's] premises and shall assume all responsibilities of an employer as provided for under the Labor Code

> of the Philippines, and shall be solely responsible to its employees for labor laws, rules and regulations, particularly those relating to minimum wage, overtime pay, holiday pay, thirteenth month pay and similar labor standards...The Contractor shall exercise in full its power of control and supervision over the workers assigned. The Contractor shall monitor the conduct of its workers in their working conditions.[5]

The LA disposed of the case as follows:

> IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:
>
> (1.) Declaring the Universal Janitorial & Allied Services as the employer of complainants;
>
> (2.) Declaring the termination of complainants as illegal and awarding them six months backwages plus separation pay in the total amount of P52,650.00 (R. Corona – P26,325.00 & A. Catingan – P26,325.00);
>
> (3.) Awarding to complainants their holiday pay, 13th month pay (prop.) and salary differentials in the total amount of P8,080.74 (R. Corona – P4,040.37 & A. Catingan – P4,040.37);
>
> (4.) 10% attorney's fees of the total award or in the amount of P6,073.07; and
>
> (5.) Dismissing all the other claims for lack of merit.
>
> TOTAL AWARD: P66,803.81[6]

Universal appealed to the National Labor Relations Commission (NLRC) claiming that it is petitioner which is the employer of the private respondents because: it was petitioner which hired and accepted the two as its drivers; it was petitioner which had direct control and supervision over the two; petitioner may select, replace, and dismiss the driver whose services are found to be unsatisfactory; and petitioner directly paid the private respondents their overtime pay. Universal also claimed that private respondents were not illegally dismissed, thus they are not entitled to backwages and reinstatement.[7]

On March 30, 1999, the NLRC issued a Resolution[8] modifying the LA's Decision, thus:

> WHEREFORE, the decision of the Labor Arbiter is Modified. The award for backwages is ordered Deleted in view of the findings that complainants were not illegally dismissed. However, Universal Janitorial and Allied Services and 7K Corporation are jointly and severally liable to pay complainants their salary differentials, proportionate 13th month pay and holiday pay which are maintained in this decision.
>
> SO ORDERED.[9]

The NLRC found that Universal is a labor-only contractor since it does not have substantial capital or investment in the form of tools, equipments, machineries and

the like, and the workers recruited are performing activities which are directly related to the principal business of the employer. The NLRC further held that since Universal is a labor-only contractor, petitioner as the principal employer, is solidarily liable with Universal for all the rightful claims of private respondents. There was also no illegal dismissal as the LA failed to identify who dismissed the complainants.[10]

Both petitioner and the private respondents filed their respective motions for reconsideration.

On August 23, 1999, the NLRC issued its Resolution denying the motions for reconsideration, thus:

> Records show that Universal's appeal was regularly filed x x x
>
> x x x
>
> The Commission's findings in its challenged resolution that Universal was a "labor-only" contractor stemmed from the latter's failure to allege and prove that it has substantial capital or investment in the form of tools, equipment and machineries to qualify it as a labor contractor. It cannot be presumed. It must alleged (sic) and prove this fact by substantial and competent evidence, otherwise, the only inescapable conclusion is that it is a "labor only" contractor.
>
> In "labor only" contracting, the employer-employee relationship is established by law between the principal employer, in this case, 7K Corporation, and the employees of the labor-only contractor, that is the complainants.
>
> The Commission did not exceed its jurisdiction when it modified the Labor Arbiter's decision. The Commission merely defined the relationship between complainants and the respondent firms in accordance with the provisions of Articles 107 and 109 in relation to Article 106 of the Labor Code. The fact that complainants did not appeal therefrom will not deprive the Commission from entertaining the appeal of Universal.
>
> The cases cited by 7K Corporation[11] to buttress its argument that the NLRC cannot modify the award granted to the employee who did not interpose an appeal from the Labor Arbiter's decision is to say the least specious. Significantly, in this (sic) cases, the NLRC erroneously modified the Labor Arbiter's decision for giving additional awards to the employee who did not appeal, more than what the Labor Arbiter awarded. Such is not the case here. The Labor Arbiter's decision was modified because of the Commission's conclusion that complainants were not illegally dismissed. Hence, the deletion of the Labor Arbiter's award for separation pay and backwages as only illegally separated employees are entitled to such awards. The other awards granted by the Labor Arbiter were maintained. However, in view of the Commission's finding that Universal was a "labor only" contractor, the provision of Article 206 of the Labor Code finds application in the relationship between the principal and the employees. There is, therefore, no cogent reason to disturb our resolution.

PREMISES considered, the motion for reconsideration is hereby DENIED for want of merit.

SO ORDERED.[12]

Petitioner went to the CA on a petition for *certiorari* claiming that the NLRC gravely abused its discretion when it implicated petitioner which was not a party to the appealed case, and by ignoring the fact that the LA decision has already become final and executory.

The CA dismissed the petition and ruled that: Universal's appeal to the NLRC was regularly filed; petitioner failed to substantiate its claim that the LA decision had become final and executory; petitioner's claim that the LA's decision was already final with respect to them and the private respondents is without merit, because when a party files a seasonable appeal, in this case Universal, the whole case goes up to the appellate court for review and all the parties below automatically become parties on appeal; the cases cited by petitioner to support its argument that the NLRC can not modify the award granted to an employee who did not appeal the decision of the LA are not applicable to the case at bar since in the said cases, the NLRC modified the LA's decision and gave additional awards to employees who did not appeal; in this case, there was no additional award given and some of the awards granted by the LA were even deleted; Universal is a labor-only contractor as defined under Art. 106, par. 4 of the Labor Code; Universal admitted such fact in its appeal memorandum when it stated that the power of control over complainants was vested in and exercised by petitioner; petitioner filed out of time its petition before the CA because the petition for *certiorari* [13] assailing the same NLRC Resolution earlier filed with the Supreme Court was dismissed in its Resolution dated November 22, 1999, and did not toll the running of the period to appeal.[14]

Petitioner now comes before this Court alleging that the CA gravely erred:

I

x x x IN NOT HOLDING THAT THE NATIONAL LABOR RELATIONS COMMISSION HAD NO JURISDICTION TO ENTERTAIN THE BELATED APPEAL OF *UNIVERSAL JANITORIAL & ALLIED SERVICES* AS THE DECISION OF THE LABOR ARBITER ALREADY BECAME FINAL AND EXECUTORY.

II

x x x IN NOT HOLDING THAT THE NATIONAL LABOR RELATIONS COMMISSION DID NOT ACQUIRE JURISDICTION OVER THE PERSON OF PETITIONER IN NLRC CA NO. M-004588 CONSIDERING THAT PETITIONER WAS NEITHER AN APPELLANT NOR AN APPELLEE IN THE SAID CASE.

III

x x x IN NOT HOLDING THAT THE NATIONAL LABOR RELATIONS COMMISSION EXCEEDED ITS AUTHORITY IN DECLARING THAT

UNIVERSAL JANITORIAL & ALLIED SERVICES IS A "LABOR-ONLY CONTRACTOR."[15]

Petitioner argues that: private respondents and petitioner did not appeal from the decision of the LA in RAB-11-10-01127-97 and RAB-11-12-01138-97, thus such decision had long become final and executory as to them; it is presumed that private respondents agreed *in toto* with the said decision as they did not appeal the decision of the LA and they even filed a motion for execution of said judgment; even with respect to Universal, the LA decision had already become final and executory as its appeal to the NLRC was filed out of time in violation of Section 3, Rule VI of the NLRC New Rules of Procedure relating to the requisites for perfecting an appeal;[16] considering that the LA's decision has become final and executory as far as petitioner and private respondents are concerned and considering that Universal failed to perfect its appeal with the NLRC, the latter had no jurisdiction to decide said appeal; as Universal did not file a position paper with the LA, its right to appeal with the NLRC should be deemed foreclosed; NLRC did not acquire jurisdiction over petitioner considering that petitioner was neither an appellant nor an appellee in the appealed case; a judgment cannot bind persons not parties to it; as the LA found that Universal admitted that private respondents were their employees, such finding by the LA, which had first-hand evidence of the controversy, should be given great respect; by acquiescing with the decision of the LA, private respondents are estopped from taking a position inconsistent with the terms of the decision; Universal is not a "labor-only contractor" because there is nothing on record which shows that it does not have substantial capital or investment in the form of tools, equipment, machineries, and the like.[17]

In their Comment, private respondents pointed out that petitioner failed to file its petition before the CA on time. They also expressed that they did not appeal from the decision of the LA and are willing to abide by whatever decision the Court would render on whether or not Universal is a labor-only contractor as the issue of which entity will pay private respondents' claims are matters which have become the concern of petitioner and Universal.[18]

In its Reply to Comment, petitioner contends that while it filed its petition before the CA beyond the reglementary period, courts should give due course to appeals perfected out of time when doing so would serve the demands of substantial justice; and that the reason why private respondents declined to make any further comment on the petition is the fact that they are amenable to the decision rendered by the LA.[19]

We find the petition bereft of merit.

First of all, the admission of petitioner in its Reply to Comment that it filed its petition with the CA beyond the reglementary period, sustains the CA findings on the matter, and therefore, the CA did not err in dismissing the petition. There is no showing that substantial justice would have been served had the CA given due course to the petition.

However, the Court opts to resolve the issues raised by petitioner on the present petition to clarify once and for all the liability of petitioner.