537 Phil. 549

SECOND DIVISION

[G.R. NOS. 169295-96, November 20, 2006]

REMINGTON INDUSTRIAL SALES CORPORATION, PETITIONER, VS. ERLINDA CASTANEDA, RESPONDENT.

D E C I S I O N

PUNO, J.:

Before this Court is the Petition for Review on *Certiorari*[1] filed by Remington Industrial Sales Corporation to reverse and set aside the Decision[2] of the Fourth Division of the Court of Appeals in CA-G.R. SP Nos. 64577 and 68477, dated January 31, 2005, which dismissed petitioner's consolidated petitions for *certiorari,* and its subsequent Resolution,[3] dated August 11, 2005, which denied petitioner's motion for reconsideration.

The antecedent facts of the case, as narrated by the Court of Appeals, are as follows:

> The present controversy began when private respondent, Erlinda Castaneda ("Erlinda") instituted on March 2, 1998 a complaint for illegal dismissal, underpayment of wages, non-payment of overtime services, non-payment of service incentive leave pay and non-payment of 13th month pay against Remington before the NLRC, National Capital Region, Quezon City. The complaint impleaded Mr. Antonio Tan in his capacity as the Managing Director of Remington.
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> Erlinda alleged that she started working in August 1983 as company cook with a salary of Php 4,000.00 for Remington, a corporation engaged in the trading business; that she worked for six (6) days a week, starting as early as 6:00 a.m. because she had to do the marketing and would end at around 5:30 p.m., or even later, after most of the employees, if not all, had left the company premises; that she continuously worked with Remington until she was unceremoniously prevented from reporting for work when Remington transferred to a new site in Edsa, Caloocan City. She averred that she reported for work at the new site in Caloocan City on January 15, 1998, only to be informed that Remington no longer needed her services. Erlinda believed that her dismissal was illegal because she was not given the notices required by law; hence, she filed her complaint for reinstatement without loss of seniority rights, salary differentials, service incentive leave pay, 13th month pay and 10% attorney's fees.
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> Remington denied that it dismissed Erlinda illegally. It posited that Erlinda was a domestic helper, not a regular employee; Erlinda worked as a cook and this job had nothing to do with Remington's business of

> trading in construction or hardware materials, steel plates and wire rope products. It also contended that contrary to Erlinda's allegations that the (sic) she worked for eight (8) hours a day, Erlinda's duty was merely to cook lunch and "merienda", after which her time was hers to spend as she pleased. Remington also maintained that it did not exercise any degree of control and/or supervision over Erlinda's work as her only concern was to ensure that the employees' lunch and "merienda" were available and served at the designated time. Remington likewise belied Erlinda's assertion that her work extended beyond 5:00 p.m. as she could only leave after all the employees had gone. The truth, according to Remington, is that Erlinda did not have to punch any time card in the way that other employees of Remington did; she was free to roam around the company premises, read magazines, and to even nap when not doing her assigned chores. Remington averred that the illegal dismissal complaint lacked factual and legal bases. Allegedly, it was Erlinda who refused to report for work when Remington moved to a new location in Caloocan City.

In a Decision[4] dated January 19, 1999, the labor arbiter dismissed the complaint and ruled that the respondent was a domestic helper under the personal service of Antonio Tan, finding that her work as a cook was not usually necessary and desirable in the ordinary course of trade and business of the petitioner corporation, which operated as a trading company, and that the latter did not exercise control over her functions. On the issue of illegal dismissal, the labor arbiter found that it was the respondent who refused to go with the family of Antonio Tan when the corporation transferred office and that, therefore, respondent could not have been illegally dismissed.

Upon appeal, the National Labor Relations Commission (NLRC) rendered a Decision, [5] dated November 23, 2000, reversing the labor arbiter, ruling, *viz:*

> We are not inclined to uphold the declaration below that complainant is a domestic helper of the family of Antonio Tan. There was no allegation by respondent that complainant had ever worked in the residence of Mr. Tan. What is clear from the facts narrated by the parties is that complainant continuously did her job as a cook in the office of respondent serving the needed food for lunch and merienda of the employees. Thus, her work as cook inured not for the benefit of the family members of Mr. Tan but solely for the individual employees of respondent.
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> Complainant as an employee of respondent company is even bolstered by no less than the certification dated May 23, 1997 issued by the corporate secretary of the company certifying that complainant is their bonafide employee. This is a solid evidence which the Labor Arbiter simply brushed aside. But, such error would not be committed here as it would be at the height of injustice if we are to declare that complainant is a domestic helper.
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> Complainant's work schedule and being paid a monthly salary of P4,000.00 are clear indication that she is a company employee who had been employed to cater to the food needed by the employees which were being provided by respondent to form part of the benefit granted them.

With regard to the issue of illegal dismissal, we believe that there is more reason to believe that complainant was not dismissed because allegedly she was the one who refused to work in the new office of respondent. However, complainant's refusal to join the workforce due to poor eyesight could not be considered abandonment of work or voluntary resignation from employment.

Under the Labor Code as amended, an employee who reaches the age of sixty years old (60 years) has the option to retire or to separate from the service with payment of separation pay/retirement benefit.

In this case, we notice that complainant was already 60 years old at the time she filed the complaint praying for separation pay or retirement benefit and some money claims.

Based on Article 287 of the Labor Code as amended, complainant is entitled to be paid her separation pay/retirement benefit equivalent to one-half (1/2) month for every year of service. The amount of separation pay would be based on the prescribed minimum wage at the time of dismissal since she was then underpaid. In as much as complainant is underpaid of her wages, it behooves that she should be paid her salary differential for the last three years prior to separation/retirement.

xxx xxx xxx

WHEREFORE, premises considered, the assailed decision is hereby, SET ASIDE, and a new one is hereby entered ordering respondents to pay complainant the following:

1. Salary differential	-	P12,021.12
2. Service Incentive Leave Pay	-	2,650.00
3. 13th Month Pay differential	-	1,001.76
4. Separation Pay/retirement benefit	-	36,075.00
Total	**-**	**P51,747.88**

SO ORDERED.

Petitioner moved to reconsider this decision but the NLRC denied the motion. This denial of its motion prompted petitioner to file a Petition for *Certiorari*[6] with the Court of Appeals, docketed as CA-G.R. SP No. 64577, on May 4, 2001, imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in (1) reversing *in toto* the decision of the labor arbiter, and (2) awarding in favor of respondent salary differential, service incentive leave pay, 13th month pay differential and separation benefits in the total sum of P51,747.88.

While the petition was pending with the Court of Appeals, the NLRC rendered another Decision[7] in the same case on August 29, 2001. How and why another decision was rendered is explained in that decision as follows:

> On May 17, 2001, complainant filed a Manifestation praying for a resolution of her Motion for Reconsideration and, in support thereof, alleges that, sometime December 18, 2000, she mailed her Manifestation and Motion for Reconsideration registered as Registered Certificate No. 188844; and that the said mail was received by the NLRC, through a certain Roland Hernandez, on December 26, 2000. Certifications to this effect was issued by the Postmaster of the Sta. Mesa Post Office bearing the date May 11, 2001 (Annexes A and B, Complainant's Manifestation).
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> Evidence in support of complainant's having actually filed a Motion for Reconsideration within the reglementary period having been sufficiently established, a determination of its merits is thus, in order.

On the merits, the NLRC found respondent's motion for reconsideration meritorious leading to the issuance of its second decision with the following dispositive portion:

> WHEREFORE, premises considered, the decision dated November 23, 2000, is MODIFIED by increasing the award of retirement pay due the complainant in the total amount of SIXTY TWO THOUSAND FOUR HUNDRED THIRTY-SEVEN and 50/100 (P62,437.50). All other monetary relief so adjudged therein are maintained and likewise made payable to the complainant.
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> SO ORDERED.

Petitioner challenged the second decision of the NLRC, including the resolution denying its motion for reconsideration, through a second Petition for *Certiorari*[8] filed with the Court of Appeals, docketed as CA-G.R. SP No. 68477 and dated January 8, 2002, this time imputing grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of the NLRC in (1) issuing the second decision despite losing its jurisdiction due to the pendency of the first petition for *certiorari* with the Court of Appeals, and (2) assuming it still had jurisdiction to issue the second decision notwithstanding the pendency of the first petition for *certiorari* with the Court of Appeals, that its second decision has no basis in law since respondent's motion for reconsideration, which was made the basis of the second decision, was not filed under oath in violation of Section 14, Rule VII[9] of the New Rules of Procedure of the NLRC and that it contained no certification as to why respondent's motion for reconsideration was not decided on time as also required by Section 10, Rule VI[10] and Section 15, Rule VII[11] of the aforementioned rules.

Upon petitioner's motion, the Court of Appeals ordered the consolidation of the two (2) petitions, on January 24, 2002, pursuant to Section 7, par. b(3), Rule 3 of the Revised Rules of the Court of Appeals. It summarized the principal issues raised in the consolidated petitions as follows:

1. Whether respondent is petitioner's regular employee or a domestic helper;

2. Whether respondent was illegally dismissed; and

3. Whether the second NLRC decision promulgated during the pendency of the first petition for *certiorari* has basis in law.

On January 31, 2005, the Court of Appeals dismissed the consolidated petitions for lack of merit, finding no grave abuse of discretion on the part of the NLRC in issuing the assailed decisions.

On the first issue, it upheld the ruling of the NLRC that respondent was a regular employee of the petitioner since the former worked at the company premises and catered not only to the personal comfort and enjoyment of Mr. Tan and his family, but also to that of the employees of the latter. It agreed that petitioner enjoys the prerogative to control respondent's conduct in undertaking her assigned work, particularly the nature and situs of her work in relation to the petitioner's workforce, thereby establishing the existence of an employer-employee relationship between them.

On the issue of illegal dismissal, it ruled that respondent has attained the status of a regular employee in her service with the company. It noted that the NLRC found that no less than the company's corporate secretary certified that respondent is a *bonafide* company employee and that she had a fixed schedule and routine of work and was paid a monthly salary of P4,000.00; that she served with petitioner for 15 years starting in 1983, buying and cooking food served to company employees at lunch and *merienda;* and that this work was usually necessary and desirable in the regular business of the petitioner. It held that as a regular employee, she enjoys the constitutionally guaranteed right to security of tenure and that petitioner failed to discharge the burden of proving that her dismissal on January 15, 1998 was for a just or authorized cause and that the manner of dismissal complied with the requirements under the law.

Finally, on petitioner's other arguments relating to the alleged irregularity of the second NLRC decision, *i.e.,* the fact that respondent's motion for reconsideration was not under oath and had no certification explaining why it was not resolved within the prescribed period, it held that such violations relate to procedural and non-jurisdictional matters that cannot assume primacy over the substantive merits of the case and that they do not constitute grave abuse of discretion amounting to lack or excess of jurisdiction that would nullify the second NLRC decision.

The Court of Appeals denied petitioner's contention that the NLRC lost its jurisdiction to issue the second decision when it received the order indicating the Court of Appeals' initial action on the first petition for *certiorari* that it filed. It ruled that the NLRC's action of issuing a decision in installments was not prohibited by its own rules and that the need for a second decision was justified by the fact that respondent's own motion for reconsideration remained unresolved in the first decision. Furthermore, it held that under Section 7, Rule 65 of the Revised Rules of Court,[12] the filing of a petition for *certiorari* does not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding with the case.

From this decision, petitioner filed a motion for reconsideration on February 22, 2005, which the Court of Appeals denied through a resolution dated August 11, 2005.

Hence, the present petition for review.