

## FIRST DIVISION

[ G.R. No. 97896, June 02, 1997 ]

**TEKNIKA SKILLS AND TRADE SERVICES, INC., PETITIONER, VS.  
HON. SECRETARY OF LABOR AND EMPLOYMENT, ACTING  
THROUGH HON. UNDERSECRETARY MA.NIEVES ROLDAN-  
CONFESOR; HON. ADMINISTRATOR OF THE PHILIPPINE  
OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); AND  
ROSANNA L. DE LEON, RESPONDENTS.**

### D E C I S I O N

**HERMOSISIMA, JR., J.:**

The herein petition for certiorari seeks the nullification of the Order<sup>[1]</sup> of the Secretary of Labor and Employment denying petitioner's appeal from the decision<sup>[2]</sup> of the Philippine Overseas Employment Administration (POEA)<sup>[3]</sup> which found petitioner guilty of misrepresentation. As penalty therefor, petitioner's license was suspended for two (2) months or, in lieu thereof, there was imposed on petitioner a fine of P 20,000.00. The Motion for Reconsideration was denied.

The following relevant facts are not disputed:

Private respondent Rosanna de Leon applied for a job with petitioner Teknika Skills and Trade Services, Inc., a duly licensed recruitment agency. She sought foreign employment as a nursing aide. At that time, however, petitioner claims not to have any job order for nursing aides. What vacant positions petitioner had which needed immediate deployment were those for janitresses.

On February 10, 1988, private respondent was deployed to Jeddah, Saudi Arabia, as a janitress with salary rate of U.S. \$ 300.00 a month. It was only in this very date of her departure for Jeddah that the private respondent was given her Travel Exit Pass. Said Travel Exit Pass indicated her job position to be that of a janitress.

Upon reaching Saudi Arabia, private respondent was brought to Jeddah where she immediately assumed work as a baby sitter at a 'social nursery' or a kind of orphanage. After working for one (1) month, private respondent was paid only Five Hundred Eighty One (SR 581.00) Rials. After barely two (2) months of service, private respondent was terminated by petitioner's foreign principal.

On April 6, 1988, private respondent arrived in Manila. Immediately thereafter, she filed a complaint against petitioner which gave rise to two (2) separate cases: (a) The money claims which included her demand for salary corresponding to the unexpired portion of her employment

contract; and (b) the administrative case charging petitioner with illegal exaction of excessive placement fees and acts of misrepresentation in violation of Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations.

With respect to private respondent's money claims, the POEA found petitioner solidarily liable with private respondent's foreign employer, for an amount corresponding to the unexpired portion of her contract. This court, in G.R. No. 100399, sustained said award in a Decision<sup>[4]</sup> promulgated on August 4, 1992.

The other aspect of private respondent's complaint concerned the administrative charge against petitioner for illegal exaction and acts of misrepresentation.

On the question of whether or not petitioner was guilty of illegal exaction, the POEA was not persuaded by the evidence presented before it; hence, it dismissed that charge for lack of merit. The POEA explained:

"Anent the charge of illegal exaction, a careful perusal of the records of the case reveal[s] that no competent and corroborating evidence was submitted by complainant to controvert respondent's denial of alleged receipt of the amount of P 15,000.00. This Office has consistently ruled that the charge of illegal exaction is a serious charge which may cause the suspension or cancellation of the authority or license of the offending agency. As such, the charge should be proven and substantiated by clear and convincing evidence.

In the case at bar, although the complainant was able to present the receipt covering the partial payment of P 3,000.00, she was not able to present additional receipts which would show that the amount collected by the respondent exceed that which the law authorizes. Moreover, she failed to specify the exact dates when the alleged payments were made. Complainant's bare allegation that only the cash payment of P 3,000.00 out of the total amount collected was receipt deserves scant consideration. In the absence of any receipt showing that respondent charge more than that allowed by law, complainant could have supported her allegations by other evidence like statement of witnesses, if any or a more detailed narration of facts. Complainant however failed to do so. On the other hand, respondent adduced as evidence the same receipt presented by the complainant covering the amount of P 3,000.00, which is not in excess of the allowable placement fee. This leads us to conclude that respondent is not liable for illegal exaction."<sup>[5]</sup>

The POEA, however, found petitioner guilty of submitting false and deceptive information regarding the deployment of private respondent as a janitress when she had in fact actually been hired as a nursing aide by petitioner's foreign principal. As such, the POEA adjudged petitioner liable for misrepresentation and penalized it with a two-month suspension license or in lieu thereof, a fine of P20,000.00. More particularly, the POEA ruled:

"As regards the charge of acts of misrepresentation, on the basis of the evidence presented and admissions made by the respondent, We find respondent liable for acts of misrepresentation for having caused the

processing of complainant's travel exit pass [TEP] in a job position and salary rate different from that for which she has applied for. It was the respondent who admitted that complainant has indeed applied for the position of nursing aide with a salary rate of \$325.00 but in the TEP processed by POEA, her position was that of a janitress x x x. We do not find merit in the respondent's contention that there was a previous agreement between them and the complainant regarding the processing of complainant's TEP. Granting that there was such an agreement, this will not erase the fact that the respondent had committed acts of misrepresentation. What the respondent violated are POEA rules and regulations. The travel exit pass is a duly approved and processed official form issued by the POEA. In lieu of employment contract, the TEP may be used in determining vital information of the terms of employment. x x x [T]hat the act of respondent as in this case will run counter to those contained in a valid TEP would be an act of misrepresentation, a violation of the rules and regulations of the POEA (Rule VI, Section 2 (c), Book II). Having violated the POEA rules and regulations on recruitment and placement, respondent should be penalized accordingly. Under the Schedule of Penalties, misrepresentation is sanctioned by two months suspension of license [or] in lieu thereof a fine of P20,000.00."<sup>[6]</sup>

On April 11, 1990, petitioner filed a Motion for Reconsideration of the aforementioned Order of the POEA. It reasoned:

"With due respect, there was no act of misrepresentation, much less, violation of the x x x POEA rules and regulations. Complainant, while applying for the position of nursing aide, agreed to be deployed as a janitress. Accordingly, her travel exit pass was duly processed and approved by the POEA for employment as janitress. She left the country as janitress according to her TEP. There was therefore no misrepresentation that should be deployed as a janitress as, in fact, she left for Saudi Arabia as a janitress. Now, the fact that she was employed as a nursing aide in Saudi Arabia, which is a higher category position, is in effect a promotion to which she should not be denied. There is no POEA rule or regulation that curtails the right of an employee to a promotion."<sup>[7]</sup>

On September 21, 1990, the POEA issued a Resolution denying petitioner's Motion for Reconsideration. The POEA disposed of petitioner's arguments in the following manner:

"Respondent would want to convince this Office that it has not committed any act of misrepresentation that would warrant the imposition of the administrative penalty of suspension of license. It justified this argument by citing Section 2 (c), Rule VI of Book II of the POEA Rules and Regulations and maintains that their act of deploying complainant as janitress is not the misrepresentation envisioned by the aforementioned section of the POEA Rules. Furthermore, respondent continued to argue that complainant knew before hand that she would be deployed as a

janitress but upon arrival at the jobsite would work actually as a nursing aide. This fact of actually working as a nursing aide which is higher in category is in effect a promotion which should not be denied the complainant. Moreover, there is no rule or regulation which could curtail the right of an employee to a promotion.

We find no merit in respondent's motion.

The quoted provision is clear and unmistakable. For clarity, it is hereto reproduced *en toto*:

'Section 2. Grounds for Suspension, Cancellation or Revocation.

A license or authority shall be cancelled, suspended or revoked on any of the following grounds, among others:

x x x

c. Engaging in acts of misrepresentation, such as publication or advertisement of false deceptive notices or information in relation to the recruitment and placement of workers;

x x x.'

The information submitted by respondent for approval of this Office were false [and] deceptive and misrepresented that the complainant will work at the employ of Arabian Gulf Co. for Maintenance and Contracting as a janitress whereas the truth of the matter is that the latter was actually hired as nursing aide and had in fact applied as such. This is certainly an act of misrepresentation aptly covered by the cited section. The misrepresentation was committed against the POEA when respondent Teknika declared before us that the worker will be deployed as a janitress whereas the truth is that the worker was hired as a nursing aide. There was also no truth in respondent's argument that complainant upon reaching the jobsite was promoted to that of a nursing aide. The pleadings on record [are] replete with facts to the effect that complainant applied and was hired as a nursing aide. [H]owever, due to lack of available job order for nursing aide, she was deployed as a janitress. This is the misrepresentation respondent has clearly committed."<sup>[8]</sup>

Aggrieved by the POEA ruling above, petitioner appealed<sup>[9]</sup> therefrom to the Secretary of Labor and Employment. Said appeal was grounded on the following postulations:

"1. x x x

POEA Administrator ratiocinates that because the complainant applied

and was hired as nursing aide, the processing of her travel exit pass in a position of janitress is an act of misrepresentation.

It is true that complainant did apply for the position of nursing aide. But, with respect to the finding that she was hired as nursing aide is another thing for such is mere conjecture and surmise. She was definitely hired as nursing aide for the reason that there was no job order available for said position. Thus, it was complainant herself who agreed to the offer to be hired as janitress. In fact, she read and signed the travel exit pass for the position of janitress. She is a high school graduate and it cannot reasonably be said that she was deceived or that the respondent concealed from the position for which she was being deployed for employment. Accordingly, complainant's travel exit pass was processed and approved by the POEA for employment as janitress. She left the country as janitress in accordance with the TEP. It is plain that there was no misrepresentation that she would be deployed to what she agreed to be hired – as janitress.

x x x When the POEA Administrator concluded that the complainant herein was hired as nursing aide, the same was actually baseless because the term 'hire' assumes that the application for nursing aide was what was accepted. But x x x complainant could not have been hired as a nursing aide for lack of available job order for that position. Thus, when complainant was offered to be deployed as janitress and she accepted the offer, she was hired for no other than as janitress.

It may be true that the complainant expected to work as nursing attendant when she reaches Saudi Arabia. This is something else. If this happens, it would work to her advantage. It would constitute a promotion in job category and would result in increase in pay.

2. x x x

x x x [Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations] is clearly designed for the protection of the applications for overseas employment. This is why the rule speaks loud and clear of 'publication and advertisement.' Under this rule, what is prohibited is the misrepresentation made to the applicant or worker for overseas employment, such as, those publications and advertisement that would deceive and mislead them with false and deceptive information and notices. What is contemplated in the rule does not refer to what the POEA Administrator had in mind which is the alleged misrepresentation or false information allegedly given to the POEA to the effect that the complainant was hired as a janitress when in truth she was hired as a nursing aide. As shown earlier, this is not a correct finding of fact, but even assuming, arguendo, that it is a correct finding, it is clear that such alleged misrepresentation is not the misrepresentation to the worker or applicant contemplated by Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations."<sup>[10]</sup>