

## FIRST DIVISION

[ G.R. No. 209822, July 08, 2015 ]

**DIONISIO DACLES,\* PETITIONER, VS. MILLENIUM ERECTORS CORPORATION AND/OR RAGAS TIU, RESPONDENTS.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated April 8, 2013. and the Resolution<sup>[3]</sup> dated October 11, 2013 of the Court of Appeals (CA) in CA-GR. SP No. 122928, which annulled and set aside the Decision<sup>[4]</sup> dated October 17, 2011 and the Resolution<sup>[5]</sup> dated December 2, 2011 of the National Labor Relations Commission (NLRC) in NLRC Case No. NCR 06-07985-10, thereby reinstating the Decision<sup>[6]</sup> dated April 4, 2010 of the Labor Arbiter (LA) dismissing petitioner Dionisio Dacles's (petitioner) illegal dismissal complaint.

#### The Facts

Respondent Millenium Erectors Corporation (MEC) is a domestic corporation engaged in the construction business.<sup>[7]</sup> On October 6, 2010, petitioner instituted a complaint<sup>[8]</sup> for illegal dismissal with money claims against MEC and its owner/manager, respondent Ragas Tiu<sup>[9]</sup> (respondents), before the NLRC, National Capital Region, docketed as NLRC-NCR-06-07985-10.

Petitioner claimed that he was hired by respondents as a mason in 1998. On June 7, 2010, while he was working on a project in Malakas Street, Quezon City (QC), he was advised by respondent's officer, Mr. Bongon, to move to another project in Robinson's Cubao, QC. However, upon arrival at the site, he was instructed to return to his former job site and, thereafter, was given a run-around for the two (2) succeeding days. When he requested to be given a post or assigned to a new project, he was told by the paymaster not to report for work anymore, prompting him to file the illegal dismissal complaint, with claims for service incentive leave (SIL) pay, overtime pay, holiday pay, 13<sup>th</sup> month pay, rest day and premium pay, and salary differentials.<sup>[10]</sup>

For their part, respondents denied having illegally dismissed petitioner, claiming that he was a mere project employee whose contract expired on June 4, 2010 upon the completion of his masonry work assignment in the Residential & Commercial Building Project (RCB Malakas Project) along East Avenue, QC.<sup>[11]</sup> Respondents further denied having employed petitioner since 1998 because it was only organized and started business operations in February 2000.<sup>[12]</sup> They averred that petitioner applied and was hired as a mason on October 8, 2009 and assigned to the Newport Entertainment and Commercial Center Project in Pasay City (NECC Project), which

was completed on March 3, 2010. Thereafter, petitioner applied anew and was hired as a mason on April 15, 2010 to work on the RCB-Malakas Project.<sup>[13]</sup> Petitioner's termination from both projects was then duly reported to the Department of Labor and Employment (DOLE) Makati/Pasay Field Office.<sup>[14]</sup>

### **The LA Ruling**

In a Decision<sup>[15]</sup> dated April 4, 2010, the LA dismissed the illegal dismissal complaint, finding that petitioner is a project employee given that: (a) the employment contracts between MEC and petitioner show that the latter, although repeatedly rehired, was engaged in particular projects and for specific periods; (b) the periods of employment were determinable with a known beginning and termination; and (c) the DOLE was notified of petitioner's termination at the end of each project. Consequently, the LA held that petitioner cannot validly claim that he was illegally dismissed because his separation was a consequence of the completion of his contract.<sup>[16]</sup> The LA likewise denied petitioner's money claims for lack of evidentiary support.<sup>[17]</sup>

Aggrieved, petitioner appealed<sup>[18]</sup> to the NLRC, docketed as NLRC LAC No. 05-001356-11.

### **The NLRC Ruling**

In a Decision<sup>[19]</sup> dated October 17, 2011, the NLRC reversed the LA ruling and instead, declared that petitioner was a regular employee. At the outset, the NLRC denied respondents' assertion that respondents could not have employed petitioner in 1998<sup>[20]</sup> since it was only registered with the Securities and Exchange Commission on February 1, 2000, as evinced by its Certificate of Incorporation,<sup>[21]</sup> ruling that the said document only proves that MEC has been operating as such without the benefit of registration; thus, the same should not be taken against petitioner's positive assertion that he was employed way back in 1998.

Accordingly, the NLRC ruled that petitioner was a regular employee since he was originally employed in 1998 without a fixed period to perform tasks that were necessary and desirable to MEC's business, and which status cannot be altered by a subsequent contract stating otherwise. To this end, it pointed out that petitioner cannot be lawfully dismissed based on the completion of the last two (2) projects to which he was assigned and that the employment contracts and termination reports submitted by MEC were merely issued to circumvent the law on regularization of the employment of construction workers.<sup>[22]</sup> The NLRC, however, denied petitioner's other money claims for lack of legal basis.<sup>[23]</sup> In fine, respondents were ordered to reinstate petitioner with full back wages, plus attorney's fees.<sup>[24]</sup>

Dissatisfied, respondents moved for reconsideration<sup>[25]</sup> which was denied in a Resolution<sup>[26]</sup> dated December 2, 2011. Hence, they filed a petition for review on *certiorari*<sup>[27]</sup> before the CA.

### **The CA Ruling**

In a Decision<sup>[28]</sup> dated April 8, 2013, the CA annulled and set aside the NLRC's ruling and reinstated the LA's ruling.<sup>[29]</sup> It held that petitioner has not presented evidence to substantiate his claim of illegal dismissal. In this relation, it observed that the NLRC made a hasty conclusion that MEC has been operating without the benefit of registration as early as 1998, and in so doing, erroneously relied on the self-serving and unsubstantiated statement of petitioner. Therefore, the CA upheld the LA's finding that petitioner is a project employee who was first hired as a mason for the NECC Project from October 8, 2009 until its completion on March 3, 2010, and second, for the RCB-Malakas Project from April 15, 2010 also until its completion. It further gave emphasis on the fact that petitioner's termination was duly reported by respondents to the DOLE.<sup>[30]</sup>

Petitioner moved for reconsideration<sup>[31]</sup> but was denied in a Resolution<sup>[32]</sup> dated October 11, 2013; hence, this petition.

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA committed reversible error in holding that the NLRC gravely abused its discretion in declaring that petitioner was a regular employee, and not a project employee.

### **The Court's Ruling**

The petition is without merit.

First, it must be stressed that to justify the grant of the extraordinary remedy of *certiorari*, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.<sup>[33]</sup>

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, inter alia, its findings and the conclusions reached thereby are not supported by substantial evidence,<sup>[34]</sup> "or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."<sup>[35]</sup>

Tested against these considerations, the Court finds that the CA correctly granted respondents' *certiorari* petition before it, since the NLRC gravely abused its discretion in ruling that petitioner was a regular employee of MEC when the latter had established by substantial evidence that petitioner was merely a project employee. On the other hand, there is no evidence on record to substantiate petitioner's claim that he was employed as early as 1998. Article 294<sup>[36]</sup> of the Labor Code,<sup>[37]</sup> as amended, distinguishes a project-based employee from a regular employee as follows:

Art. 294. *Regular and casual employment.* - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, **except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee** or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

x x x x (Emphasis and underscoring supplied)

Thus, for an employee to be considered project-based, the employer must show that: (a) the employee was assigned to carry out a specific project or undertaking; and (b) the duration and scope of which were specified at the time the employee was engaged for such project.<sup>[38]</sup> Being assigned to a project or a phase thereof which begins and ends at determined or determinable times, the services of project employees may be lawfully terminated at the completion of such project or phase.<sup>[39]</sup> Consequently, in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent them from attaining regular status, employers claiming that their workers are project employees should prove that: (a) the duration and scope of the employment was specified at the time they were engaged; and (b) there was indeed a project.<sup>[40]</sup>

In this case, records reveal that petitioner was adequately informed of his employment status (as project employee) at the time of his engagement for the NECC and RCB-Malakas Projects. This is clearly substantiated by the latter's employment contracts<sup>[41]</sup> duly signed by him, explicitly stating that: (a) he was hired as a project employee; and (b) his employment was for the indicated starting dates therein "and will end on completion/phase of work of project."<sup>[42]</sup> To the Court's mind, said contracts sufficiently apprised petitioner that his security of tenure with MEC would only last as long as the specific project or a phase thereof to which he was assigned was subsisting. Hence, when the project or phase was completed, he was validly terminated from employment, his engagement being co-terminus only with such project or phase.

Further, pursuant to Department Order No. 19, or the "Guidelines Governing the Employment of Workers in the Construction Industry," respondent duly submitted the required Establishment Employment Reports<sup>[43]</sup> to the DOLE Makati/Pasay Field Office regarding the "permanent termination" of petitioner from both of the projects for which he was engaged (i.e., the NECC and RCB-Malakas Projects). As aptly pointed out by the CA, such submission is an indication of project employment. In *Tomas Lao Construction v. NLRC*,<sup>[44]</sup> the Court elucidated:

Moreover, if private respondents were indeed employed as "project employees," petitioners should have submitted a report of termination to the nearest public employment office every time their employment was terminated due to completion of each construction project. The records show that they did not. Policy Instruction No. 20 is explicit that employers of project employees are exempted from the clearance