729 Phil. 298

FIRST DIVISION

[G.R. No. 186621, March 12, 2014]

SOUTH EAST INTERNATIONAL RATTAN, INC. AND/OR ESTANISLAO[1] AGBAY, PETITIONERS, VS. JESUS J. COMING, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Before the Court is a petition for review on certiorari under Rule 45 to reverse and set aside the Decision[2] dated February 21, 2008 and Resolution[3] dated February 9, 2009 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 02113.

Petitioner South East International Rattan, Inc. (SEIRI) is a domestic corporation engaged in the business of manufacturing and exporting furniture to various countries with principal place of business at Paknaan, Mandaue City, while petitioner Estanislao Agbay, as per records, is the President and General Manager of SEIRI.[4]

On November 3, 2003, respondent Jesus J. Coming filed a complaint[5] for illegal dismissal, underpayment of wages, non-payment of holiday pay, 13th month pay and service incentive leave pay, with prayer for reinstatement, back wages, damages and attorney's fees.

Respondent alleged that he was hired by petitioners as Sizing Machine Operator on March 17, 1984. His work schedule is from 8:00 a.m. to 5:00 p.m. Initially, his compensation was on "*pakiao*" basis but sometime in June 1984, it was fixed at P150.00 per day which was paid weekly. In 1990, without any apparent reason, his employment was interrupted as he was told by petitioners to resume work in two months time. Being an uneducated person, respondent was persuaded by the management as well as his brother not to complain, as otherwise petitioners might decide not to call him back for work. Fearing such consequence, respondent accepted his fate. Nonetheless, after two months he reported back to work upon order of management.[6]

Despite being an employee for many years with his work performance never questioned by petitioners, respondent was dismissed on January 1, 2002 without lawful cause. He was told that he will be terminated because the company is not doing well financially and that he would be called back to work only if they need his services again. Respondent waited for almost a year but petitioners did not call him back to work. When he finally filed the complaint before the regional arbitration branch, his brother Vicente was used by management to persuade him to withdraw the case.[7]

On their part, petitioners denied having hired respondent asserting that SEIRI was incorporated only in 1986, and that respondent actually worked for SEIRI's furniture suppliers because when the company started in 1987 it was engaged purely in buying and exporting furniture and its business operations were suspended from the last quarter of 1989 to August 1992. They stressed that respondent was not included in the list of employees submitted to the Social Security System (SSS). Moreover, respondent's brother, Vicente Coming, executed an affidavit[8] in support of petitioners' position while Allan Mayol and Faustino Apondar issued notarized certifications[9] that respondent worked for them instead.[10]

With the denial of petitioners that respondent was their employee, the latter submitted an affidavit[11] signed by five former co-workers stating that respondent was one of the pioneer employees who worked in SEIRI for almost twenty years.

In his Decision[12] dated April 30, 2004, Labor Arbiter Ernesto F. Carreon ruled that respondent is a regular employee of SEIRI and that the termination of his employment was illegal. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent South East (Int'l.) Rattan, Inc. to pay complainant Jesus J. Coming the following:
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> | | | |
> |---|---|---|
> | 1. Separation pay | | P114,400.00 |
> | 2. Backwages | | P 30,400.00 |
> | 3. Wage differential | | P 15,015.00 |
> | 4. 13th month pay | | P 5,958.00 |
> | 5. Holiday pay | | P 4,000.00 |
> | 6. Service incentive leave pay | | P 2,000.00 |
> | | Total award | P171,773.00 |
>
> The other claims and the case against respondent Estanislao Agbay are dismissed for lack of merit.
>
> SO ORDERED.[13]

Petitioners appealed to the National Labor Relations Commission (NLRC)-Cebu City where they submitted the following additional evidence: (1) copies of SEIRI's payrolls and individual pay records of employees;[14] (2) affidavit[15] of SEIRI's Treasurer, Angelina Agbay; and (3) second affidavit[16] of Vicente Coming.

On July 28, 2005, the NLRC's Fourth Division rendered its Decision,[17] the dispositive portion of which states:

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby SET ASIDE and VACATED and a new one entered DISMISSING the complaint.
>
> SO ORDERED.[18]

The NLRC likewise denied respondent's motion for reconsideration.[19]

Respondent elevated the case to the CA via a petition for certiorari under Rule 65.

By Decision dated February 21, 2008, the CA reversed the NLRC and ruled that there existed an employer-employee relationship between petitioners and respondent who was dismissed without just and valid cause. The CA thus decreed:

> WHEREFORE, in view of the foregoing, the petition is hereby GRANTED. The assailed Decision dated July 28, 2005 issued by the National Labor Relations Commission (NLRC), Fourth Division, Cebu City in NLRC Case No. V-000625-2004 is REVERSED and SET ASIDE. The Decision of the Labor Arbiter dated April 30, 2004 is REINSTATED with MODIFICATION on the computation of backwages which should be computed from the time of illegal termination until the finality of this decision.
>
> Further, the Labor Arbiter is directed to make the proper adjustment in the computation of the award of separation pay as well as the monetary awards of wage differential, 13th month pay, holiday pay and service incentive leave pay.
>
> SO ORDERED.[20]

Petitioners filed a motion for reconsideration but the CA denied it under Resolution dated February 9, 2009.

Hence, this petition raising the following issues:

> 6.1
>
> WHETHER UNDER THE FACTS AND EVIDENCE ON RECORD, THE FINDING OF THE HONORABLE COURT OF APPEALS THAT THERE EXISTS EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN PETITIONERS AND RESPONDENT IS IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THIS HONORABLE COURT.
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> 6.2
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> WHETHER THE HONORABLE COURT OF APPEALS CORRECTLY APPRECIATED IN ACCORDANCE WITH APPLICABLE LAW AND JURISPRUDENCE THE EVIDENCE PRESENTED BY BOTH PARTIES.
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> 6.3
>
> WHETHER UNDER THE FACTS AND EVIDENCE PRESENTED, THE FINDING OF THE HONORABLE COURT OF APPEALS THAT PETITIONERS ARE LIABLE FOR ILLEGAL DISMISSAL OF RESPONDENT IS IN ACCORD WITH

APPLICABLE LAW AND JURISPRUDENCE.

6.4

WHETHER UNDER THE FACTS PRESENTED, THE RULING OF THE HONORABLE COURT OF APPEALS THAT THE BACKWAGES DUE THE RESPONDENT SHOULD BE COMPUTED FROM THE TIME OF ILLEGAL TERMINATION UNTIL THE FINALITY OF THE DECISION IS SUPPORTED BY PREVAILING JURISPRUDENCE.[21]

Resolution of the first issue is paramount in view of petitioners' denial of the existence of employer-employee relationship.

The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact. As a rule, this Court is not a trier of facts and this applies with greater force in labor cases.[22] Only errors of law are generally reviewed by this Court.[23] This rule is not absolute, however, and admits of exceptions. For one, the Court may look into factual issues in labor cases when the factual findings of the Labor Arbiter, the NLRC, and the CA are conflicting.[24] Here, the findings of the NLRC differed from those of the Labor Arbiter and the CA, which compels the Court's exercise of its authority to review and pass upon the evidence presented and to draw its own conclusions therefrom.[25]

To ascertain the existence of an employer-employee relationship jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test."[26] In resolving the issue of whether such relationship exists in a given case, substantial evidence – that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion – is sufficient. Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence.[27]

In support of their claim that respondent was not their employee, petitioners presented Employment Reports to the SSS from 1987 to 2002, the Certifications issued by Mayol and Apondar, two affidavits of Vicente Coming, payroll sheets (1999-2000), individual pay envelopes and employee earnings records (1999-2000) and affidavit of Angelina Agbay (Treasurer and Human Resources Officer). The payroll and pay records did not include the name of respondent. The affidavit of Ms. Agbay stated that after SEIRI started its business in 1986 purely on export trading, it ceased operations in 1989 as evidenced by Certification dated January 18, 1994 from the Securities and Exchange Commission (SEC); that when business resumed in 1992, SEIRI undertook only a little of manufacturing; that the company never hired any workers for varnishing and pole sizing because it bought the same from various suppliers, including Faustino Apondar; respondent was never hired by SEIRI; and while it is true that Mr. Estanislao Agbay is the company President, he never dispensed the salaries of workers.[28]

In his first affidavit, Vicente Coming averred that:

> 6. [Jesus Coming] is a furniture factory worker. In 1982 to 1986, he was working with Ben Mayol as round core maker/splitter.
>
> 7. Thereafter, we joined Okay Okay Yard owned by Amelito Montececillo. This is a rattan trader with business address near Cebu Rattan Factory on a "Pakiao" basis.
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> 8. However, Jesus and I did not stay long at Okay Okay Yard and instead we joined Eleuterio Agbay in Labogon, Cebu in 1989. In 1991, we went back to Okay Okay located near the residence of Atty. Vicente de la Serna in Mandaue City. We were on a "pakiao" basis. We stayed put until 1993 when we resigned and joined Dodoy Luna in Labogon, Mandaue City as classifier until 1995. In 1996[,] Jesus rested. It was only in 1997 that he worked back. He replaced me, as a classifier in Rattan Traders owned by Allan Mayol. But then, towards the end of the year, he left the factory and relaxed in our place of birth, in Sogod, Cebu.
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> 9. It was only towards the end of 1999 that Jesus was taken back by Allan Mayol as sizing machine operator. However, the work was off and on basis. Not regular in nature, he was harping a side line job with me knowing that I am now working with Faustino Apondar that supplies rattan furniture's *[sic]* to South East (Int'l) Rattan, Inc. As a brother, I allowed Jesus to work with me and collect the proceeds of his services as part of my collectibles from Faustino Apondar since I was on a "pakiao" basis. He was working at his pleasure. Which means, he works if he likes to? That will be until 10:00 o'clock in the evening.
>
> x x x x[29]

The Certification dated January 20, 2004 of Allan Mayol reads:

> This is to certify that I personally know Jesus Coming, the brother of Vicente Coming. Jesus is a rattan factory worker and he was working with me as rattan pole sizing/classifier of my business from 1997 up to part of 1998 when he left my factory at will. I took him back towards the end of 1999, this time as a sizing machine operator. In all these years, his services are not regular. He works only if he likes to.[30]

Faustino Apondar likewise issued a Certification which states:

> This is to certify that I am a maker/supplier of finished Rattan Furniture. As such, I have several rattan furniture workers under me, one of whom is Vicente Coming, the brother of Jesus Coming.
>
> That sometime in 1999, Vicente pleaded to me for a side line job of his brother, Jesus who was already connected with Allan Mayol. Having