715 Phil. 335

FIRST DIVISION

[G.R. No. 159371, July 29, 2013]

D. M. CONSUNJI CORPORATION, PETITIONER, VS. ROGELIO P. BELLO, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

For the resignation of an employee to be a viable defense in an action for illegal dismissal, an employer must prove that the resignation was voluntary, and its evidence thereon must be clear, positive and convincing. The employer cannot rely on the weakness of the employee's evidence.

The Case

We now review the decision promulgated on February 18, 2003,[1] whereby the Court of Appeals (CA) granted the petition for *certiorari* of respondent Rogelio P. Bello, reversed and set aside the resolutions dated January 3, 2002[2] and February 26, 2002[3] of the National Labor Relations Commission (NLRC), and reinstated the decision rendered on January 9, 2001 by the Executive Labor Arbiter (ELA) declaring Bello to have been illegally dismissed and ordering petitioner D.M. Consunji Corporation (DMCI) to reinstate him, and to pay him full backwages reckoned from the time of his dismissal until his actual reinstatement. [4]

Antecedents

Bello brought a complaint for illegal dismissal and damages against DMCI and/or Rachel Consunji. In his position paper, he claimed that DMCI had employed him as a mason without any interruption from February 1, 1990 until October 10, 1997 at an hourly rate of P25.081; that he had been a very diligent and devoted worker and had served DMCI as best as he could and without any complaints; that he had never violated any company rules; that his job as a mason had been necessary and desirable in the usual business or trade of DMCI; that he had been diagnosed to be suffering from pulmonary tuberculosis, thereby necessitating his leave of absence; that upon his recovery, he had reported back to work, but DMCI had refused to accept him and had instead handed to him a termination paper; that he had been terminated due to "RSD" effective November 5, 1997; that he did not know the meaning of "RSD" as the cause of his termination; that the cause had not been explained to him; that he had not been given prior notice of his termination; that he had not been paid separation pay as mandated by law; that at that time of his dismissal, DMCI's projects had not yet been completed; and that even if he had been terminated due to an authorized cause, he should have been given at least one month pay or at least one-half month pay for every year of service he had rendered, whichever was higher.

In its position paper submitted on March 6, 2000,[5] DMCI contended that Bello had only been a project employee, as borne out by his contract of employment and appointment papers; that after his termination from employment, it had complied with the reportorial requirements of the Department of Labor and Employment (DOLE) pursuant to the mandates of Policy Instruction No. 20, as revised by Department Order No. 19, series of 1993; and that although his last project employment contract had been set to expire on October 7, 1997, he had tendered his voluntary resignation on October 4, 1997 for health reasons that had rendered him incapable of performing his job, per his resignation letter.

On January 9, 2001, ELA Isabel G. Panganiban-Ortiguerra rendered a decision,[6] disposing thusly:

> WHEREFORE, premises considered, judgment is hereby rendered declaring respondent company DM Consunji, Inc., guilty of illegal dismissal and it is hereby ordered to reinstate complainant to his former position without loss of seniority rights and to pay him full backwages reckoned from the time of his dismissal up to his actual reinstatement which as of this date is in the amount of P232,648,81.
>
> SO ORDERED.

DMCI appealed to the NLRC, citing the following grounds, namely:

> I. THE [LABOR] ARBITER A QUO GRAVELY ABUSED HER DISCRETION IN HOLDING THAT COMPLAINANT IS A REGULAR EMPLOYEE [NOT] EVEN AS THIS IS CONTRARY TO LAW, EVIDENCE AND JURISPRUDENCE.
>
> II. THE [LABOR] ARBITER A QUO GRAVELY ABUSED HER DISCRETION IN DECLARING COMPLAINANT'S TERMINATION AS ILLEGAL EVEN AS HE HAD VOLUNTARILY RESIGNED FROM HIS LAST PROJECT EMPLOYMENT.[7]

On January 3, 2002, the NLRC issued its resolution setting aside the decision of ELA Panganiban-Ortiguerra, and dismissing Bello's claims,[8] *viz*:

> Addressing the first issue on appeal, a cursory reading of the records indeed show that contrary to the declaration of the Labor Arbiter that complainant's years of service was without any gaps and was continuous to warrant regularity of employment, the same was not so. In fine what was clearly illustrated by respondents in their appeal memorandum by way of matrix, there were considerable and substantial gaps between complainant's employment. In addition, it is of judicial notice that respondent company, being one of the biggest and well known construction company, as even admitted by the Executive Labor Arbiter, cater to so many clients/projects. So much that it is not improbable that

> complainant may be hired continuously one after the other in different projects considering that he is a mason whose functions are more than highly needed in construction. Even as it is, the matrix presented by respondents still showed considerable gaps. The fact that sometimes complainant's contract is extended beyond approximated date of finish contract, do not in anyway (sic) readily make his employment regular. For it is common among construction projects for a certain phase of work to be extended, depending on varied factors such as weather, availability of materials, whims and caprice of clients and many more. So much so, it was error on the part of the Executive Labor Arbiter to take this against respondents and pin it as another determining factor of regularity of employment. Neither can it be said that as mason complainant's function is necessary and desirable to respondents business hence, he is a regular employee. x x x we simply cannot close our eyes to the reality that complainant is a project employee and that the case she is citing does not fit herein as it is akin to a square peg being in a round hole. To top it all, records show that respondents have faithfully complied with the provision of Policy Instruction No. 20 on project employees.
>
> Lastly, records do show that complainant executed a voluntary resignation. And while there may indeed be a slight difference in the signature and handwriting, this do not readily mean that complainant did not execute the same as was the inclination of the Executive Labor Arbiter. For one, she has no expertise to determine so. Secondly, and [as] was validly pointed out, complainant if indeed he was coerced, cheated or shortchanged, would ordinarily almost immediately seek redress. In the case at bar, he sat it out and waited two (2) years. Is this case, an afterthought? We believe so.
>
> ACCORDINGLY, finding merit in respondent's appeal, the decision of the Executive Labor Arbiter is hereby SET ASIDE and this case DISMISSED for want of merits (*sic*).
>
> SO ORDERED.

Bello moved for a reconsideration,[9] but the NLRC denied his motion on February 26, 2002. [10]

Ruling of the CA

Bello then assailed the dismissal of his complaint *via* petition for *certiorari*,[11] averring that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction in upholding DMCI's appeal, in setting aside the decision of the ELA, and in dismissing his complaint and denying his motion for reconsideration.

On February 18, 2003, the CA promulgated its assailed decision,[12] finding Bello to have acquired the status of a regular employee although he had started as a project employee of DMCI by his having been employed as a mason who had performed tasks that had been usually necessary and desirable in the business or trade of DMCI continuously from February 1, 1990 to October 5, 1997; that his repeated re-

hiring and the continuing need for his services over a long span of time had undeniably made him a regular employee; that DMCI's compliance with the reportorial requirements under Policy Instruction No. 20 (by which the project employer was required to make a report to the Department of Labor and Employment of every termination of its projects) could not preclude the acquisition of tenurial security by the employee; that the cause of his dismissal after he had acquired the status of a regular employee – the completion of the phase of work – could not be considered as a valid cause under Article 282 of the *Labor Code*; and that his supposedly voluntary resignation could not be accorded faith after the ELA had concluded that the handwriting in the supposed resignation letter was "undeniably different from that of complainant," a fact "not rebutted by herein respondents."

DMCI sought the reconsideration of the decision, but the CA denied its motion on July 24, 2003.[13]

Issues

Hence, DMCI appeals, presenting the following issues for our consideration and resolution, to wit:

I. WHETHER OR NOT PRIVATE RESPONDENT WAS A REGULAR EMPLOYEE; AND

II. WHETHER OR NOT PRIVATE RESPONDENT WAS DISMISSED OR VOLUNTARILY RESIGNED.

Ruling of the Court

The petition for review lacks merit.

The provision that governs the first issue is Article 280 of the *Labor Code*, which is quoted hereunder as to its relevant part, *viz*:

> Article 280. *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 and desirable to 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 service to be performed is seasonal in nature and the employment is for the duration of the season. (Emphasis supplied)
>
> x x x x

A project employee is, therefore, one who is hired for a specific project or