686 Phil. 21

THIRD DIVISION

[G.R. No. 163657, April 18, 2012]

INTERNATIONAL MANAGEMENT SERVICES/MARILYN C. PASCUAL, PETITIONER, VS. ROEL P. LOGARTA, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* assailing the Decision[1] dated January 8, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 58739, and the Resolution[2] dated May 12, 2004 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

Sometime in 1997, the petitioner recruitment agency, International Management Services (IMS), a single proprietorship owned and operated by Marilyn C. Pascual, deployed respondent Roel P. Logarta to work for Petrocon Arabia Limited (Petrocon) in Alkhobar, Kingdom of Saudi Arabia, in connection with general engineering services of Petrocon for the Saudi Arabian Oil Company (Saudi Aramco). Respondent was employed for a period of two (2) years, commencing on October 2, 1997, with a monthly salary of eight hundred US Dollars (US$800.00). In October 1997, respondent started to work for Petrocon as Piping Designer for works on the projects of Saudi Aramco.

Thereafter, in a letter[3] dated December 21, 1997, Saudi Aramco informed Petrocon that for the year 1998, the former is allotting to the latter a total work load level of 170,850 man-hours, of which 100,000 man-hours will be allotted for cross-country pipeline projects.

However, in a letter[4] dated April 29, 1998, Saudi Aramco notified Petrocon that due to changes in the general engineering services work forecast for 1998, the man-hours that were formerly allotted to Petrocon is going to be reduced by 40%.

Consequently, due to the considerable decrease in the work requirements of Saudi Aramco, Petrocon was constrained to reduce its personnel that were employed as piping designers, instrument engineers, inside plant engineers, etc., which totaled to some 73 personnel, one of whom was respondent.

Thus, on June 1, 1998, Petrocon gave respondent a written notice[5] informing the latter that due to the lack of project works related to his expertise, he is given a 30-day notice of termination, and that his last day of work with Petrocon will be on July 1, 1998. Petrocon also informed respondent that all due benefits in accordance with the terms and conditions of his employment contract will be paid to respondent, including his ticket back to the Philippines.

On June 23, 1998, respondent, together with his co-employees, requested Petrocon to issue them a letter of Intent stating that the latter will issue them a No Objection Certificate once they find another employer before they leave Saudi Arabia.[6] On June 27, 1998, Petrocon granted the request and issued a letter of intent to respondent.[7]

Before his departure from Saudi Arabia, respondent received his final paycheck[8] from Petrocon amounting SR7,488.57.

Upon his return, respondent filed a complaint with the Regional Arbitration Branch VII, National Labor Relations Commission (NLRC), Cebu City, against petitioner as the recruitment agency which employed him for employment abroad. In filing the complaint, respondent sought to recover his unearned salaries covering the unexpired portion of his employment contract with Petrocon on the ground that he was illegally dismissed.

After the parties filed their respective position papers, the Labor Arbiter rendered a Decision[9] in favor of the respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Marilyn C. Pascual, doing business under the name and style International Management Services, to pay the complainant Roel Logarta the peso equivalent of US $5,600.00 based on the rate at the time of actual payment, as payment of his wages for the unexpired portion of his contract of employment.
>
> The other claims are dismissed for lack of merit.
>
> So Ordered.[10]

Aggrieved, petitioner filed an Appeal[11] before the NLRC. On October 29, 1999, the NLRC, Fourth Division, Cebu City rendered a Decision[12] affirming the decision of the Labor Arbiter, but reduced the amount to be paid by the petitioner, to wit:

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby AFFIRMED with MODIFICATION reducing the award to only US $4,800.00 or its peso equivalent at the time of payment.
>
> SO ORDERED.[13]

Petitioner filed a motion for reconsideration, but it was denied in the Resolution[14] dated April 17, 2000.

Not satisfied, petitioner sought recourse before the CA,[15] arguing that the NLRC gravely abused its discretion:

(a) in holding that *while* Petrocon's retrenchment was justified, Petrocon failed to observe the legal procedure for a valid retrenchment when, in fact, Petrocon did observe the legal procedural requirements for a valid implementation of its retrenchment scheme; and
(b) in making an award under Section 10 of R.A. No. 8042 which is premised on a termination of employment without just, valid or authorized cause as defined by law or contract, notwithstanding that NLRC itself found Petrocon's retrenchment to be justified.[16]

On January 8, 2004, the CA rendered the assailed Decision dismissing the petition, the decretal portion of which reads:

> WHEREFORE, premises considered, the petition is DISMISSED and the impugned Decision dated October 29, 1999 and Resolution dated April 17, 2000 are AFFIRMED. Costs against the petitioner.
>
> SO ORDERED.[17]

In ruling in favor of the respondent, the CA agreed with the findings of the NLRC that retrenchment could be a valid cause to terminate respondent's employment with Petrocon. Considering that there was a considerable reduction in Petrocon's work allocation from Saudi Aramco, the reduction of its work personnel was a valid exercise of management prerogative to reduce the number of its personnel, particularly in those fields affected by the reduced work allocation from Saudi Aramco. However, although there was a valid ground for retrenchment, the same was implemented without complying with the requisites of a valid retrenchment. Also, the CA concluded that although the respondent was given a 30-day notice of his termination, there was no showing that the Department of Labor and Employment (DOLE) was also sent a copy of the said notice as required by law. Moreover, the CA found that a perusal of the check payroll details would readily show that respondent was not paid his separation pay.

Petitioner filed a motion for reconsideration, but it was denied in the Resolution[18] dated May 12, 2004.

Hence, the petition assigning the following errors:

I.

> THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT THE 30-DAY NOTICE TO DOLE PRIOR TO RETRENCHMENT IS NOT APPLICABLE IN THIS CASE.

II.

> THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT RESPONDENT EMPLOYEE DID NOT CONSENT TO HIS SEPARATION

FROM THE PRINCIPAL COMPANY.

III.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT JARIOL VS. IMS IS NOT APPLICABLE TO THE INSTANT CASE.

IV.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT RESPONDENT DID NOT RECEIVE THE SEPARATION PAY REQUIRED BY LAW.[19]

Petitioner argues that the 30-day notice of termination, as required in *Serrano v. NLRC*,[20] is not applicable in the case at bar, considering that respondent was in fact given the 30-day notice. More importantly, Republic Act (R.A.) No. 8042, or the Migrant Workers and Overseas Filipino Act of 1995 nor its Implementing Rules do not require the sending of notice to the DOLE, 30 days before the effectivity of a retrenchment of an Overseas Filipino Worker (OFW) based on grounds under Article 283 of the Labor Code.

Petitioner maintains that respondent has consented to his termination, since he raised no objection to his retrenchment and actually sought another employer during his 30-day notice of termination. Respondent even requested from Petrocon a No Objection Certificate, which the latter granted to facilitate respondent's application to other Saudi Arabian employers.

Petitioner also posits that the CA should have applied the case of *Jariol v. IMS*[21] even if the said case was only decided by the NLRC, a quasi-judicial agency. The said case involved similar facts, wherein the NLRC categorically ruled that employers of OFWs are not required to furnish the DOLE in the Philippines a notice if they intend to terminate a Filipino employee.

Lastly, petitioner insists that respondent received his separation pay. Moreover, petitioner contends that Section 10 of R.A. No. 8042 does not apply in the present case, since the termination of respondent was due to a just, valid or authorized cause. At best, respondent is only entitled to separation pay in accordance with Article 283 of the Labor Code, *i.e.*, one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher.

On his part, respondent maintains that the CA committed no reversible error in rendering the assailed decision.

The petition is partly meritorious.

Retrenchment is the reduction of work personnel usually due to poor financial returns, aimed to cut down costs for operation particularly on salaries and wages.[22] It is one of the economic grounds to dismiss employees and is resorted by an employer primarily to avoid or minimize business losses.[23]

Retrenchment programs are purely business decisions within the purview of a valid and reasonable exercise of management prerogative. It is one way of downsizing an employer's workforce and is often resorted to by the employer during periods of business recession, industrial depression, or seasonal fluctuations, and during lulls in production occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or introduction of new methods or more efficient machinery or automation. It is a valid management prerogative, provided it is done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence.[24]

In the case at bar, despite the fact that respondent was employed by Petrocon as an OFW in Saudi Arabia, still both he and his employer are subject to the provisions of the Labor Code when applicable. The basic policy in this jurisdiction is that all Filipino workers, whether employed locally or overseas, enjoy the protective mantle of Philippine labor and social legislations.[25] In the case of *Royal Crown Internationale v. NLRC*,[26] this Court has made the policy pronouncement, thus:

> x x x. Whether employed locally or overseas, all Filipino workers enjoy the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. This pronouncement is in keeping with the basic public policy of the State to afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. x x x[27]

Philippine Law recognizes retrenchment as a valid cause for the dismissal of a migrant or overseas Filipino worker under Article 283 of the Labor Code, which provides:

> *Closure of establishment and reduction of personnel.* - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operations of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to at least one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.