

FIRST DIVISION

[G.R. No. 163700, April 18, 2012]

**CHARLIE JAO, PETITIONER, VS. BCC PRODUCTS SALES INC., AND
TERRANCE TY, RESPONDENTS.**

D E C I S I O N

BERSAMIN, J.:

The issue is whether petitioner was respondents' employee or not. Respondents denied an employer-employee relationship with petitioner, who insisted the contrary.

Through his petition for review on *certiorari*, petitioner appeals the decision promulgated by the Court of Appeals (CA) on February 27, 2004,^[1] finding no employee-employer relationship between him and respondents, thereby reversing the ruling by the National Labor Relations Commission (NLRC) to the effect that he was the employee of respondents.

Antecedents

Petitioner maintained that respondent BCC Product Sales Inc. (BCC) and its President, respondent Terrance Ty (Ty), employed him as comptroller starting from September 1995 with a monthly salary of P20,000.00 to handle the financial aspect of BCC's business;^[2] that on October 19, 1995, the security guards of BCC, acting upon the instruction of Ty, barred him from entering the premises of BCC where he then worked; that his attempts to report to work in November and December 12, 1995 were frustrated because he continued to be barred from entering the premises of BCC;^[3] and that he filed a complaint dated December 28, 1995 for illegal dismissal, reinstatement with full backwages, non-payment of wages, damages and attorney's fees.^[4]

Respondents countered that petitioner was not their employee but the employee of Sobien Food Corporation (SFC), the major creditor and supplier of BCC; and that SFC had posted him as its comptroller in BCC to oversee BCC's finances and business operations and to look after SFC's interests or investments in BCC.^[5]

Although Labor Arbiter Felipe Pati ruled in favor of petitioner on June 24, 1996,^[6] the NLRC vacated the ruling and remanded the case for further proceedings.^[7] Thereafter, Labor Arbiter Jovencio Ll. Mayor rendered a new decision on September 20, 2001, dismissing petitioner's complaint for want of an employer-employee relationship between the parties.^[8] Petitioner appealed the September 20, 2001 decision of Labor Arbiter Mayor.

On July 31, 2002, the NLRC rendered a decision reversing Labor Arbiter Mayor's decision, and declaring that petitioner had been illegally dismissed. It ordered the

payment of unpaid salaries, backwages and 13th month pay, separation pay and attorney's fees.^[9] Respondents moved for the reconsideration of the NLRC decision, but their motion for reconsideration was denied on September 30, 2002.^[10] Thence, respondents assailed the NLRC decision on *certiorari* in the CA.

Ruling of the CA

On February 27, 2004, the CA promulgated its assailed decision,^[11] holding:

After a judicious review of the records vis-à-vis the respective posturing of the contending parties, we agree with the finding that no employer-employee relationship existed between petitioner BCC and the private respondent. On this note, the conclusion of the public respondent must be reversed for being issued with grave abuse of discretion.

"Etched in an unending stream of cases are the four (4) standards in determining the existence of an employer-employee relationship, namely, (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and, (d) the presence or absence of control of the putative employee's conduct." Of these powers the power of control over the employee's conduct is generally regarded as determinative of the existence of the relationship.

Apparently, in the case before us, all these four elements are absent. First, there is no proof that the services of the private respondent were engaged to perform the duties of a comptroller in the petitioner company. There is no proof that the private respondent has undergone a selection procedure as a standard requisite for employment, especially with such a delicate position in the company. Neither is there any proof of his appointment nor is there any showing that the parties entered into an employment contract, stipulating thereof that he will receive P20,000.00/month salary as comptroller, before the private respondent commenced with his work as such. Second, as clearly established on record, the private respondent was not included in the petitioner company's payroll during the time of his alleged employment with the former. True, the name of the private respondent Charlie Jao appears in the payroll however it does not prove that he has received his remuneration for his services. Notably, his name was not among the employees who will receive their salaries as represented by the payrolls. Instead, it appears therein as a comptroller who is authorized to approve the same. Suffice it to state that it is rather obscure for a certified public accountant doing the functions of a comptroller from September 1995 up to December 1995 not to receive his salary during the said period. Verily, such scenario does not conform with the usual and ordinary experience of man. Coming now to the most controlling factor, the records indubitably reveal the undisputed fact that the petitioner company did not have nor did not exercise the power of control over the private respondent. It did not prescribe the manner by which the work is to be carried out, or the time by which the private respondent has to

report for and leave from work. As already stated, the power of control is such an important factor that other requisites may even be disregarded. In ***Sevilla v. Court of Appeals***, the Supreme Court emphatically held, thus:

“The “control test,” under which the person for whom the services are rendered reserves the right to direct not only the end to be achieved but also the means for reaching such end, is generally relied on by the courts.”

We have carefully examined the evidence submitted by the private respondent in the formal offer of evidence and unfortunately, other than the bare assertions of the private respondent which he miserably failed to substantiate, we find nothing therein that would decisively indicate that the petitioner BCC exercised the fundamental power of control over the private respondent in relation to his employment—not even the ID issued to the private respondent and the affidavits executed by Bertito Jemilla and Rogelio Santias. At best, these pieces of documents merely suggest the existence of employer-employee relationship as intimated by the NLRC. On the contrary, it would appear that the said sworn statement provided a substantial basis to support the contention that the private respondent worked at the petitioner BCC as SFC’s representative, being its major creditor and supplier of goods and merchandise. Moreover, as clearly pointed out by the petitioner in his Reply to the private respondent’s Comment, it is unnatural for SFC to still employ the private respondent “to oversee and supervise collections of account receivables due SFC from its customers or clients” like the herein petitioner BCC on a date later than December, 1995 considering that a criminal complaint has already been instituted against him.

Sadly, the private respondent failed to sufficiently discharge the burden of showing with legal certainty that employee-employer relationship existed between the parties. On the other hand, it was clearly shown by the petitioner that it neither exercised control nor supervision over the conduct of the private respondent’s employment. Hence, the allegation that there is employer-employee relationship must necessarily fail.

Consequently, a discussion on the issue of illegal dismissal therefore becomes unnecessary.

WHEREFORE, premises considered, the petition is GRANTED. The assailed Decision of the public respondent NLRC dated July 31, 2002 and the Resolution dated September 30, 2002 are REVERSED and SET ASIDE. Accordingly, the decision of the Labor Arbiter dated September 20, 2001 is hereby REINSTATED.

SO ORDERED.

After the CA denied petitioner’s motion for reconsideration on May 14, 2004,^[12] he filed a motion for extension to file petition for review, which the Court denied

through the resolution dated July 7, 2004 for failure to render an explanation on why the service of copies of the motion for extension on respondents was not personally made.^[13] The denial notwithstanding, he filed his petition for review on *certiorari*. The Court denied the petition on August 18, 2004 in view of the denial of the motion for extension of time and the continuing failure of petitioner to render the explanation as to the non-personal service of the petition on respondents.^[14] However, upon a motion for reconsideration, the Court reinstated the petition for review on *certiorari* and required respondents to comment.^[15]

Issue

The sole issue is whether or not an employer-employee relationship existed between petitioner and BCC. A finding on the existence of an employer-employee relationship will automatically warrant a finding of illegal dismissal, considering that respondents did not state any valid grounds to dismiss petitioner.

Ruling

The petition lacks merit.

The existence of an employer-employee relationship is a question of fact. Generally, a re-examination of factual findings cannot be done by the Court acting on a petition for review on *certiorari* because the Court is not a trier of facts but reviews only questions of law. Nor may the Court be bound to analyze and weigh again the evidence adduced and considered in the proceedings below.^[16] 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.^[17]

Here, the findings of the NLRC differed from those of the Labor Arbiter and the CA. This conflict among such adjudicating offices compels the Court's exercise of its authority to review and pass upon the evidence presented and to draw its own conclusions therefrom.

To prove his employment with BCC, petitioner offered the following: (a) BCC Identification Card (ID) issued to him stating his name and his position as "comptroller," and bearing his picture, his signature, and the signature of Ty; (b) a payroll of BCC for the period of October 1-15, 1996 that petitioner approved as comptroller; (c) various bills and receipts related to expenditures of BCC bearing the signature of petitioner; (d) various checks carrying the signatures of petitioner and Ty, and, in some checks, the signature of petitioner alone; (e) a court order showing that the issuing court considered petitioner's ID as proof of his employment with BCC; (f) a letter of petitioner dated March 1, 1997 to the Department of Justice on his filing of a criminal case for *estafa* against Ty for non-payment of wages; (g) affidavits of some employees of BCC attesting that petitioner was their co-employee in BCC; and (h) a notice of raffle dated December 5, 1995 showing that petitioner, being an employee of BCC, received the notice of raffle in behalf of BCC.^[18]

Respondents denied that petitioner was BCC's employee. They affirmed that SFC had installed petitioner as its comptroller in BCC to oversee and supervise SFC's collections and the account of BCC to protect SFC's interest; that their issuance of