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THIRD DIVISION

[G.R. No. 178551, October 11, 2010]

ATCI OVERSEAS CORPORATION, AMALIA G. IKDAL AND MINISTRY OF PUBLIC HEALTH-KUWAIT PETITIONERS, VS. MA. JOSEFA ECHIN, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Josefina Echin (respondent) was hired by petitioner ATCI Overseas Corporation in behalf of its principal-co-petitioner, the Ministry of Public Health of Kuwait (the Ministry), for the position of medical technologist under a two-year contract, denominated as a Memorandum of Agreement (MOA), with a monthly salary of US$1,200.00.

Under the MOA,[1] all newly-hired employees undergo a probationary period of one (1) year and are covered by Kuwait's Civil Service Board Employment Contract No. 2.

Respondent was deployed on February 17, 2000 but was terminated from employment on February 11, 2001, she not having allegedly passed the probationary period.

As the Ministry denied respondent's request for reconsideration, she returned to the Philippines on March 17, 2001, shouldering her own air fare.

On July 27, 2001, respondent filed with the National Labor Relations Commission (NLRC) a complaint[2] for illegal dismissal against petitioner ATCI as the local recruitment agency, represented by petitioner, Amalia Ikdal (Ikdal), and the Ministry, as the foreign principal.

By Decision[3] of November 29, 2002, the Labor Arbiter, finding that petitioners neither showed that there was just cause to warrant respondent's dismissal nor that she failed to qualify as a regular employee, held that respondent was illegally dismissed and accordingly ordered petitioners to pay her US$3,600.00, representing her salary for the three months unexpired portion of her contract.

On appeal of petitioners ATCI and Ikdal, the NLRC *affirmed* the Labor Arbiter's decision by Resolution[4] of January 26, 2004. Petitioners' motion for reconsideration having been denied by Resolution[5] of April 22, 2004, they appealed to the Court of Appeals, contending that their principal, the Ministry, being a foreign government agency, is immune from suit and, as such, the immunity extended to them; and that respondent was validly dismissed for her failure to meet the performance rating within the one-year period as required under Kuwait's Civil

Service Laws. Petitioners further contended that Ikdal should not be liable as an officer of petitioner ATCI.

By Decision[6] of March 30, 2007, the appellate court *affirmed* the NLRC Resolution.

In brushing aside petitioners' contention that they only acted as agent of the Ministry and that they cannot be held jointly and solidarily liable with it, the appellate court noted that under the law, a private employment agency shall assume all responsibilities for the implementation of the contract of employment of an overseas worker, hence, it can be sued jointly and severally with the foreign principal for any violation of the recruitment agreement or contract of employment.

As to Ikdal's liability, the appellate court held that under Sec. 10 of Republic Act No. 8042, the "Migrant and Overseas Filipinos' Act of 1995," corporate officers, directors and partners of a recruitment agency may themselves be jointly and solidarily liable with the recruitment agency for money claims and damages awarded to overseas workers.

Petitioners' motion for reconsideration having been denied by the appellate court by Resolution[7] of June 27, 2007, the present petition for review on certiorari was filed.

Petitioners maintain that they should not be held liable because respondent's employment contract specifically stipulates that her employment shall be governed by the Civil Service Law and Regulations of Kuwait. They thus conclude that it was patent error for the labor tribunals and the appellate court to apply the Labor Code provisions governing probationary employment in deciding the present case.

Further, petitioners argue that even the Philippine Overseas Employment Act (POEA) Rules relative to master employment contracts (Part III, Sec. 2 of the POEA Rules and Regulations) accord respect to the "customs, practices, company policies and labor laws and legislation of the host country."

Finally, petitioners posit that assuming *arguendo* that Philippine labor laws are applicable, given that the foreign principal is a government agency which is immune from suit, as in fact it did not sign any document agreeing to be held jointly and solidarily liable, petitioner ATCI cannot likewise be held liable, more so since the Ministry's liability had not been judicially determined as jurisdiction was not acquired over it.

The petition fails.

Petitioner ATCI, as a private recruitment agency, cannot evade responsibility for the money claims of Overseas Filipino workers (OFWs) which it deploys abroad by the mere expediency of claiming that its foreign principal is a government agency clothed with immunity from suit, or that such foreign principal's liability must first be established before it, as agent, can be held jointly and solidarily liable.

In providing for the joint and solidary liability of private recruitment agencies with their foreign principals, Republic Act No. 8042 precisely affords the OFWs with a recourse and assures them of immediate and sufficient payment of what is due

them. *Skippers United Pacific v. Maguad*[8] explains:

> . . . **[T]he obligations covenanted in the recruitment agreement entered into by and between the local agent and its foreign principal are not coterminous with the term of such agreement** so that if either or both of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end, but the same extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. **Otherwise, this will render nugatory the very purpose for which the law governing the employment of workers for foreign jobs abroad was enacted**. (emphasis supplied)

The imposition of joint and solidary liability is in line with the policy of the state to protect and alleviate the plight of the working class.[9] Verily, to allow petitioners to simply invoke the immunity from suit of its foreign principal or to wait for the judicial determination of the foreign principal's liability before petitioner can be held liable renders the law on joint and solidary liability inutile.

As to petitioners' contentions that Philippine labor laws on probationary employment are not applicable since it was expressly provided in respondent's employment contract, which she voluntarily entered into, that the terms of her engagement shall be governed by prevailing Kuwaiti Civil Service Laws and Regulations as in fact POEA Rules accord respect to such rules, customs and practices of the host country, the same was not substantiated.

Indeed, a contract freely entered into is considered the law between the parties who can establish stipulations, clauses, terms and conditions as they may deem convenient, including the laws which they wish to govern their respective obligations, as long as they are not contrary to law, morals, good customs, public order or public policy.

It is hornbook principle, however, that the party invoking the application of a foreign law has the burden of proving the law, under the doctrine of *processual presumption* which, in this case, petitioners failed to discharge. The Court's ruling in *EDI-Staffbuilders Int'l., v. NLRC*[10] illuminates:

> In the present case, **the employment contract signed by Gran specifically states that Saudi Labor Laws will govern matters not provided for in the contract** (e.g. specific causes for termination, termination procedures, etc.). Being the law intended by the parties (*lex loci intentiones*) to apply to the contract, Saudi Labor Laws should govern all matters relating to the termination of the employment of Gran.
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> **In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take**