599 Phil. 746

SECOND DIVISION

[G.R. No. 178827, March 04, 2009]

JEROMIE D. ESCASINAS AND EVAN RIGOR SINGCO, PETITIONERS, VS. SHANGRI-LA'S MACTAN ISLAND RESORT AND DR. JESSICA J.R. PEPITO, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Registered nurses Jeromie D. Escasinas and Evan Rigor Singco (petitioners) were engaged in 1999 and 1996, respectively, by Dr. Jessica Joyce R. Pepito (respondent doctor) to work in her clinic at respondent Shangri-la's Mactan Island Resort (Shangri-la) in Cebu of which she was a retained physician.

In late 2002, petitioners filed with the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. VII (NLRC-RAB No. VII) a complaint[1] for regularization, underpayment of wages, non-payment of holiday pay, night shift differential and 13th month pay differential against respondents, claiming that they are regular employees of Shangri-la. The case was docketed as RAB Case No. 07-11-2089-02.

Shangri-la claimed, however, that petitioners were not its employees but of respondent doctor whom it retained via Memorandum of Agreement (MOA)[2] pursuant to Article 157 of the Labor Code, as amended.

Respondent doctor for her part claimed that petitioners were already working for the previous retained physicians of Shangri-la before she was retained by Shangri-la; and that she maintained petitioners' services upon their request.

By Decision[3] of May 6, 2003, Labor Arbiter Ernesto F. Carreon declared petitioners to be regular employees of Shangri-la. The Arbiter thus ordered Shangri-la to grant them the wages and benefits due them as regular employees from the time their services were engaged.

In finding petitioners to be regular employees of Shangri-la, the Arbiter noted that they usually perform work which is necessary and desirable to Shangri-la's business; that they observe clinic hours and render services only to Shangri-la's guests and employees; that payment for their salaries were recommended to Shangri-la's Human Resource Department (HRD); that respondent doctor was Shangri-la's "in-house" physician, hence, also an employee; and that the MOA between Shangri-la and respondent doctor was an "insidious mechanism in order to circumvent [the doctor's] tenurial security and that of the employees under her."

Shangri-la and respondent doctor appealed to the NLRC. Petitioners appealed too, but only with respect to the non-award to them of some of the benefits they were

claiming.

By Decision[4] dated March 31, 2005, the NLRC granted Shangri-la's and respondent doctor's appeal and dismissed petitioners' complaint for lack of merit, it finding that no employer-employee relationship exists between petitioner and Shangri-la. In so deciding, the NLRC held that the Arbiter erred in interpreting Article 157 in relation to Article 280 of the Labor Code, as what is required under Article 157 is that the employer should provide the services of medical personnel to its employees, but nowhere in said article is a provision that nurses are required to be employed; that contrary to the finding of the Arbiter, even if Article 280 states that if a worker performs work usually necessary or desirable in the business of the employer, he cannot be automatically deemed a regular employee; and that the MOA amply shows that respondent doctor was in fact engaged by Shangri-la on a retainer basis, under which she could hire her own nurses and other clinic personnel.

Brushing aside petitioners' contention that since their application for employment was addressed to Shangri-la, it was really Shangri-la which hired them and not respondent doctor, the NLRC noted that the applications for employment were made by persons who are not parties to the case and were not shown to have been actually hired by Shangri-la.

On the issue of payment of wages, the NLRC held that the fact that, for some months, payment of petitioners' wages were recommended by Shangri-la's HRD did not prove that it was Shangri-la which pays their wages. It thus credited respondent doctor's explanation that the recommendations for payment were based on the billings she prepared for salaries of additional nurses during Shangri-la's peak months of operation, in accordance with the retainership agreement, the guests' payments for medical services having been paid directly to Shanrgi-la.

Petitioners thereupon brought the case to the Court of Appeals which, by Decision[5] of May 22, 2007, affirmed the NLRC Decision that no employer-employee relationship exists between Shangri-la and petitioners. The appellate court concluded that all aspects of the employment of petitioners being under the supervision and control of respondent doctor and since Shangri-la is not principally engaged in the business of providing medical or healthcare services, petitioners could not be regarded as regular employees of Shangri-la.

Petitioners' motion for reconsideration having been denied by Resolution[6] of July 10, 2007, they interposed the present recourse.

Petitioners insist that under Article 157 of the Labor Code, Shangri-la is required to hire a full-time registered nurse, apart from a physician, hence, their engagement should be deemed as regular employment, the provisions of the MOA notwithstanding; and that the MOA is contrary to public policy as it circumvents tenurial security and, therefore, should be struck down as being void *ab initio*. At most, they argue, the MOA is a mere job contract.

And petitioners maintain that respondent doctor is a labor-only contractor for she has no license or business permit and no business name registration, which is contrary to the requirements under Sec. 19 and 20 of the Implementing Rules and Regulations of the Labor Code on sub-contracting.

Petitioners add that respondent doctor cannot be a legitimate independent contractor, lacking as she does in substantial capital, the clinic having been set-up and already operational when she took over as retained physician; that respondent doctor has no control over how the clinic is being run, as shown by the different orders issued by officers of Shangri-la forbidding her from receiving cash payments and several purchase orders for medicines and supplies which were coursed thru Shangri-la's Purchasing Manager, circumstances indubitably showing that she is not an independent contractor but a mere agent of Shangri-la.

In its Comment,[7] Shangri-la questions the Special Powers of Attorneys (SPAs) appended to the petition for being inadequate. On the merits, it prays for the disallowance of the petition, contending that it raises factual issues, such as the validity of the MOA, which were never raised during the proceedings before the Arbiter, albeit passed upon by him in his Decision; that Article 157 of the Labor Code does not make it mandatory for a covered establishment to employ health personnel; that the services of nurses is not germane nor indispensable to its operations; and that respondent doctor is a legitimate individual independent contractor who has the power to hire, fire and supervise the work of the nurses under her.

The resolution of the case hinges, in the main, on the correct interpretation of Art. 157 *vis a vis* Art. 280 and the provisions on permissible job contracting of the Labor Code, as amended.

The Court holds that, contrary to petitioners' postulation, **Art. 157 does not require the engagement of full-time nurses as regular employees of a company employing not less than 50 workers**. Thus, the Article provides:

> ART. 157. *Emergency medical and dental services*. - **It shall be the duty of every employer to furnish his employees** in any locality with free medical and dental attendance and facilities consisting of:
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> (a) The **services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces**, in which case the services of a graduate first-aider shall be provided for the protection of the workers, where no registered nurse is available. The Secretary of Labor shall provide by appropriate regulations the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order hazardous workplaces for purposes of this Article;
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> (b) **The services of a <u>full-time</u> registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300)**; and

(c) The services of a full-time physician, dentist and full-time registered nurse as well as a dental clinic, and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300).

In cases of hazardous workplaces, no employer shall engage the services of a physician or dentist who cannot stay in the premises of the establishment for at least two (2) hours, in the case of those engaged on part-time basis, and not less than eight (8) hours in the case of those employed on full-time basis. **Where the undertaking is nonhazardous in nature, the physician and dentist may be engaged on retained basis, subject to such regulations as the Secretary of Labor may prescribe to insure immediate availability of medical and dental treatment and attendance in case of emergency.** (Emphasis and underscoring supplied)

Under the foregoing provision, Shangri-la, which employs more than 200 workers, is mandated to "**furnish**" its employees with the services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic which means that **it should provide or make available such medical and allied services to its employees, not necessarily to hire or employ a service provider**. As held in *Philippine Global Communications vs. De Vera*:[8]

x x x **while it is true that the provision requires employers to engage the services of medical practitioners in certain establishments depending on the number of their employees, nothing is there in the law which says that medical practitioners so engaged be actually hired as employees**, adding that the law, as written, only requires the employer "**to retain**", not employ, a part-time physician who needed to stay in the premises of the non-hazardous workplace for two (2) hours. (Emphasis and underscoring supplied)

The term "full-time" in Art. 157 cannot be construed as referring to the type of employment of the person engaged to provide the services, for Article 157 must *not* be read alongside Art. 280[9] in order to vest employer-employee relationship on the employer and the person so engaged. So *De Vera* teaches:

x x x For, we take it that any agreement may provide that one party shall render services for and in behalf of another, no matter how necessary for the latter's business, **even without being hired as an employee**. This set-up is precisely true in the case of an independent contractorship as well as in an agency agreement. **Indeed, Article 280 of the Labor Code, quoted by the appellate court, is not the yardstick for determining the existence of an employment relationship. As it is, the provision merely distinguishes between two (2) kinds of employees, *i.e.*, regular and casual**. x x x[10] (Emphasis and underscoring supplied)

The phrase "services of a full-time registered nurse" should thus be taken to refer to the kind of services that the nurse will render in the company's premises and to its employees, not the manner of his engagement.