

SECOND DIVISION

[G.R. No. 179652, May 08, 2009]

**PEOPLE'S BROADCASTING (BOMBO RADYO PHILS., INC.),
PETITIONER, VS. THE SECRETARY OF THE DEPARTMENT OF
LABOR AND EMPLOYMENT, THE REGIONAL DIRECTOR, DOLE
REGION VII, AND JANDELEON JUEZAN, RESPONDENTS.**

DECISION

TINGA, J.:

The present controversy concerns a matter of first impression, requiring as it does the determination of the demarcation line between the prerogative of the Department of Labor and Employment (DOLE) Secretary and his duly authorized representatives, on the one hand, and the jurisdiction of the National Labor Relations Commission, on the other, under Article 128 (b) of the Labor Code in an instance where the employer has challenged the jurisdiction of the DOLE at the very first level on the ground that no employer-employee relationship ever existed between the parties.

I.

The instant petition for certiorari under Rule 65 assails the decision and the resolution of the Court of Appeals dated 26 October 2006 and 26 June 2007, respectively, in C.A. G.R. CEB-SP No. 00855.^[1]

The petition traces its origins to a complaint filed by Jandeleon Juezan (respondent) against People's Broadcasting Service, Inc. (Bombo Radyo Phils., Inc) (petitioner) for illegal deduction, non-payment of service incentive leave, 13th month pay, premium pay for holiday and rest day and illegal diminution of benefits, delayed payment of wages and non-coverage of SSS, PAG-IBIG and Philhealth before the Department of Labor and Employment (DOLE) Regional Office No. VII, Cebu City.^[2] On the basis of the complaint, the DOLE conducted a plant level inspection on 23 September 2003. In the *Inspection Report Form*,^[3] the Labor Inspector wrote under the heading "Findings/Recommendations" "non-diminution of benefits" and "Note: Respondent deny employer-employee relationship with the complainant- see Notice of Inspection results." In the *Notice of Inspection Results*^[4] also bearing the date 23 September 2003, the Labor Inspector made the following notations:

Management representative informed that complainant is a drama talent hired on a per drama " participation basis" hence no employer-employeeeship [sic] existed between them. As proof of this, management presented photocopies of cash vouchers, billing statement, employments of specific undertaking (a contract between the talent director & the complainant), summary of billing of drama production etc. They (mgt.) has [sic] not control of the talent if he ventures into another contract w/

other broadcasting industries.

On the other hand, complainant Juezan's alleged violation of non-diminution of benefits is computed as follows:

@ P 2,000/15 days + 1.5 mos = P 6,000
(August 1/03 to Sept 15/03)

Note: Recommend for summary investigation or whatever action deem proper.^[5]

Petitioner was required to rectify/restitute the violations within five (5) days from receipt. No rectification was effected by petitioner; thus, summary investigations were conducted, with the parties eventually ordered to submit their respective position papers.^[6]

In his Order dated 27 February 2004,^[7] DOLE Regional Director Atty. Rodolfo M. Sabulao (Regional Director) ruled that respondent is an employee of petitioner, and that the former is entitled to his money claims amounting to P203,726.30. Petitioner sought reconsideration of the Order, claiming that the Regional Director gave credence to the documents offered by respondent without examining the originals, but at the same time he missed or failed to consider petitioner's evidence. Petitioner's motion for reconsideration was denied.^[8] On appeal to the DOLE Secretary, petitioner denied once more the existence of employer-employee relationship. In its Order dated 27 January 2005, the Acting DOLE Secretary dismissed the appeal on the ground that petitioner did not post a cash or surety bond and instead submitted a Deed of Assignment of Bank Deposit.^[9]

Petitioner elevated the case to the Court of Appeals, claiming that it was denied due process when the DOLE Secretary disregarded the evidence it presented and failed to give it the opportunity to refute the claims of respondent. Petitioner maintained that there is no employer-employee relationship had ever existed between it and respondent because it was the drama directors and producers who paid, supervised and disciplined respondent. It also added that the case was beyond the jurisdiction of the DOLE and should have been considered by the labor arbiter because respondent's claim exceeded P5,000.00.

The Court of Appeals held that petitioner was not deprived of due process as the essence thereof is only an opportunity to be heard, which petitioner had when it filed a motion for reconsideration with the DOLE Secretary. It further ruled that the latter had the power to order and enforce compliance with labor standard laws irrespective of the amount of individual claims because the limitation imposed by Article 29 of the Labor Code had been repealed by Republic Act No. 7730.^[10] Petitioner sought reconsideration of the decision but its motion was denied.^[11]

Before this Court, petitioner argues that the National Labor Relations Commission (NLRC), and not the DOLE Secretary, has jurisdiction over respondent's claim, in view of Articles 217 and 128 of the Labor Code.^[12] It adds that the Court of Appeals committed grave abuse of discretion when it dismissed petitioner's appeal without delving on the issues raised therein, particularly the claim that no employer-

employee relationship had ever existed between petitioner and respondent. Finally, petitioner avers that there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law available to it.

On the other hand, respondent posits that the Court of Appeals did not abuse its discretion. He invokes Republic Act No. 7730, which "removes the jurisdiction of the Secretary of Labor and Employment or his duly authorized representatives, from the effects of the restrictive provisions of Article 129 and 217 of the Labor Code, regarding the confinement of jurisdiction based on the amount of claims."^[13] Respondent also claims that petitioner was not denied due process since even when the case was with the Regional Director, a hearing was conducted and pieces of evidence were presented. Respondent stands by the propriety of the Court of Appeals' ruling that there exists an employer-employee relationship between him and petitioner. Finally, respondent argues that the instant petition for certiorari is a wrong mode of appeal considering that petitioner had earlier filed a Petition for Certiorari, Mandamus and Prohibition with the Court of Appeals; petitioner, instead, should have filed a Petition for Review.^[14]

II.

The significance of this case may be reduced to one simple question—does the Secretary of Labor have the power to determine the existence of an employer-employee relationship?

To resolve this pivotal issue, one must look into the extent of the visitorial and enforcement power of the DOLE found in Article 128 (b) of the Labor Code, as amended by Republic Act 7730. It reads:

Article 128 (b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and **in cases where the relationship of employer-employee still exists**, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders **to give effect to the labor standards provisions of this Code and other labor legislation** based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representative shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection. (emphasis supplied)

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The provision is quite explicit that the visitorial and enforcement power of the DOLE comes into play only "in cases when the relationship of employer-employee still exists." It also underscores the avowed objective underlying the grant of power to the DOLE which is "to give effect to the labor standard provision of this Code and other labor legislation." Of course, a person's entitlement to labor standard benefits under the labor laws presupposes the existence of employer-employee relationship in the first place.

The clause "in cases where the relationship of employer-employee still exists" signifies that the employer-employee relationship must have existed even before the emergence of the controversy. **Necessarily, the DOLE's power does not apply in two instances, namely: (a) where the employer-employee relationship has ceased; and (b) where no such relationship has ever existed.**

The first situation is categorically covered by Sec. 3, Rule 11 of the *Rules on the Disposition of Labor Standards Cases*^[15] issued by the DOLE Secretary. It reads:

Rule II MONEY CLAIMS ARISING FROM
COMPLAINT/ROUTINE INSPECTION

Sec. 3. *Complaints where no employer-employee relationship actually exists.* Where employer-employee relationship no longer exists by reason of the fact that it has already been severed, claims for payment of monetary benefits fall within the exclusive and original jurisdiction of the labor arbiters. Accordingly, if on the face of the complaint, it can be ascertained that employer-employee relationship no longer exists, the case, whether accompanied by an allegation of illegal dismissal, shall immediately be endorsed by the Regional Director to the appropriate branch of the National Labor Relations Commission (NLRC).

In the recent case of *Bay Haven, Inc. v. Abuan*,^[16] this Court recognized the first situation and accordingly ruled that a complainant's allegation of his illegal dismissal had deprived the DOLE of jurisdiction as per Article 217 of the Labor Code.^[17]

In the first situation, the claim has to be referred to the NLRC because it is the NLRC which has jurisdiction in view of the termination of the employer-employee relationship. The same procedure has to be followed in the second situation since it is the NLRC that has jurisdiction in view of the absence of employer-employee relationship between the evidentiary parties from the start.

Clearly the law accords a prerogative to the NLRC over the claim when the employer-employee relationship has terminated or such relationship has not arisen at all. The reason is obvious. In the second situation especially, the existence of an employer-employee relationship is a matter which is not easily determinable from an ordinary inspection, necessarily so, because the elements of such a relationship are not verifiable from a mere ocular examination. The intricacies and implications of an employer-employee relationship demand that the level of scrutiny should be far above the cursory and the mechanical. While documents, particularly documents found in the employer's office are the primary source materials, what may prove decisive are factors related to the history of the employer's business operations, its current state as well as accepted contemporary practices in the industry. More often than not, the question of employer-employee relationship becomes a battle of evidence, the determination of which should be comprehensive and intensive and therefore best left to the specialized quasi-judicial body that is the NLRC.

It can be assumed that the DOLE in the exercise of its visitorial and enforcement power somehow has to make a determination of the existence of an employer-employee relationship. Such prerogative determination,

however, cannot be coextensive with the visitorial and enforcement power itself. Indeed, such determination is merely preliminary, incidental and collateral to the DOLE's primary function of enforcing labor standards provisions. The determination of the existence of employer-employee relationship is still primarily lodged with the NLRC. This is the meaning of the clause "in cases where the relationship of employer-employee still exists" in Art. 128 (b).

Thus, before the DOLE may exercise its powers under Article 128, two important questions must be resolved: (1) Does the employer-employee relationship still exist, or alternatively, was there ever an employer-employee relationship to speak of; and (2) Are there violations of the Labor Code or of any labor law?

The existence of an employer-employee relationship is a statutory prerequisite to and a limitation on the power of the Secretary of Labor, one which the legislative branch is entitled to impose. The rationale underlying this limitation is to eliminate the prospect of competing conclusions of the Secretary of Labor and the NLRC, on a matter fraught with questions of fact and law, which is best resolved by the quasi-judicial body, which is the NLRC, rather than an administrative official of the executive branch of the government. If the Secretary of Labor proceeds to exercise his visitorial and enforcement powers absent the first requisite, as the dissent proposes, his office confers jurisdiction on itself which it cannot otherwise acquire.

The approach suggested by the dissent is frowned upon by common law. To wit:

[I]t is a general rule, **that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends;** and however its decision may be final on all particulars, making up together that subject matter which, if true, is within its jurisdiction, and however necessary in many cases it may be for it to make a preliminary inquiry, whether some collateral matter be or be not within the limits, yet, upon this preliminary question, its decision must always be open to inquiry in the superior court.^[18]

A more liberal interpretative mode, "pragmatic or functional analysis," has also emerged in ascertaining the jurisdictional boundaries of administrative agencies whose jurisdiction is established by statute. Under this approach, the Court examines the intended function of the tribunal and decides whether a particular provision falls within or outside that function, rather than making the provision itself the determining centerpiece of the analysis.^[19] Yet even under this more expansive approach, the dissent fails.

A reading of Art. 128 of the Labor Code reveals that the Secretary of Labor or his authorized representatives was granted visitorial and enforcement powers for the purpose of determining violations of, and enforcing, the Labor Code and any labor law, wage order, or rules and regulations issued pursuant thereto. Necessarily, the actual existence of an employer-employee relationship affects the complexion of the putative findings that the Secretary of Labor may determine, since employees are entitled to a different set of rights under the Labor Code from the employer as opposed to non-employees. Among these differentiated rights are those accorded