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THIRD DIVISION

[G.R. No. 155207, August 13, 2008]

WILHELMINA S. OROZCO, PETITIONER, VS. THE FIFTH DIVISION OF THE HONORABLE COURT OF APPEALS, PHILIPPINE DAILY INQUIRER, AND LETICIA JIMENEZ MAGSANOC, RESPONDENTS.

DECISION

NACHURA, J.:

The case before this Court raises a novel question never before decided in our jurisdiction - whether a newspaper columnist is an employee of the newspaper which publishes the column.

In this Petition for Review under Rule 45 of the Revised Rules on Civil Procedure, petitioner Wilhelmina S. Orozco assails the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 50970 dated June 11, 2002 and its Resolution[2] dated September 11, 2002 denying her Motion for Reconsideration. The CA reversed and set aside the Decision[3] of the National Labor Relations Commission (NLRC), which in turn had affirmed the Decision[4] of the Labor Arbiter finding that Orozco was an employee of private respondent *Philippine Daily Inquirer* (PDI) and was illegally dismissed as columnist of said newspaper.

In March 1990, PDI engaged the services of petitioner to write a weekly column for its Lifestyle section. She religiously submitted her articles every week, except for a six-month stint in New York City when she, nonetheless, sent several articles through mail. She received compensation of P250.00 - later increased to P300.00 - for every column published.[5]

On November 7, 1992, petitioner's column appeared in the PDI for the last time. Petitioner claims that her then editor, Ms. Lita T. Logarta,[6] told her that respondent Leticia Jimenez Magsanoc, PDI Editor in Chief, wanted to stop publishing her column for no reason at all and advised petitioner to talk to Magsanoc herself. Petitioner narrates that when she talked to Magsanoc, the latter informed her that it was PDI Chairperson Eugenia Apostol who had asked to stop publication of her column, but that in a telephone conversation with Apostol, the latter said that Magsanoc informed her (Apostol) that the Lifestyle section already had many columnists.[7]

On the other hand, PDI claims that in June 1991, Magsanoc met with the Lifestyle section editor to discuss how to improve said section. They agreed to cut down the number of columnists by keeping only those whose columns were well-written, with regular feedback and following. In their judgment, petitioner's column failed to improve, continued to be superficially and poorly written, and failed to meet the high standards of the newspaper. Hence, they decided to terminate petitioner's column.[8]

Aggrieved by the newspaper's action, petitioner filed a complaint for illegal dismissal, backwages, moral and exemplary damages, and other money claims before the NLRC.

On October 29, 1993, Labor Arbiter Arthur Amansec rendered a Decision in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered, finding complainant to be an employee of respondent company; ordering respondent company to reinstate her to her former or equivalent position, with backwages.
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> Respondent company is also ordered to pay her 13th month pay and service incentive leave pay.
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> Other claims are hereby dismissed for lack of merit.
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> SO ORDERED.[9]

The Labor Arbiter found that:

> [R]espondent company exercised full and complete control over the means and method by which complainant's work - that of a regular columnist - had to be accomplished. This control might not be found in an instruction, verbal or oral, given to complainant defining the means and method she should write her column. Rather, this control is manifested and certained (sic) in respondents' admitted prerogative to reject any article submitted by complainant for publication.
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> By virtue of this power, complainant was helplessly constrained to adopt her subjects and style of writing to suit the editorial taste of her editor. Otherwise, off to the trash can went her articles.
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> Moreover, this control is already manifested in column title, "Feminist Reflection" allotted complainant. Under this title, complainant's writing was controlled and limited to a woman's perspective on matters of feminine interests. That respondent had no control over the subject matter written by complainant is strongly belied by this observation. Even the length of complainant's articles were set by respondents.
>
> Inevitably, respondents would have no control over when or where complainant wrote her articles as she was a columnist who could produce an article in thirty (3) (sic) months or three (3) days, depending on her mood or the amount of research required for an article but her actions were controlled by her obligation to produce an article a week. If complainant did not have to report for work eight (8) hours a day, six (6) days a week, it is because her task was mainly mental. Lastly, the fact that her articles were (sic) published weekly for three (3) years show that she was respondents' regular employee, not a once-in-a-blue-moon contributor who was not under any pressure or obligation to produce regular articles and who wrote at his own whim and leisure.[10]

PDI appealed the Decision to the NLRC. In a Decision dated August 23, 1994, the NLRC Second Division dismissed the appeal thereby affirming the Labor Arbiter's Decision. The NLRC initially noted that PDI failed to perfect its appeal, under Article 223 of the Labor Code, due to non-filing of a cash or surety bond. The NLRC said that the reason proffered by PDI for not filing the bond - that it was difficult or impossible to determine the amount of the bond since the Labor Arbiter did not specify the amount of the judgment award - was not persuasive. It said that all PDI had to do was compute based on the amount it was paying petitioner, counting the number of weeks from November 7, 1992 up to promulgation of the Labor Arbiter's decision.[11]

The NLRC also resolved the appeal on its merits. It found no error in the Labor Arbiter's findings of fact and law. It sustained the Labor Arbiter's reasoning that respondent PDI exercised control over petitioner's work.

PDI then filed a Petition for Review[12] before this Court seeking the reversal of the NLRC Decision. However, in a Resolution[13] dated December 2, 1998, this Court referred the case to the Court of Appeals, pursuant to our ruling in *St. Martin Funeral Homes v. National Labor Relations Commission*.[14]

The CA rendered its assailed Decision on June 11, 2002. It set aside the NLRC Decision and dismissed petitioner's Complaint. It held that the NLRC misappreciated the facts and rendered a ruling wanting in substantial evidence. The CA said:

> The Court does not agree with public respondent NLRC's conclusion. First, private respondent admitted that she was and [had] never been considered by petitioner PDI as its employee. Second, it is not disputed that private respondent had no employment contract with petitioner PDI. In fact, her engagement to contribute articles for publication was based on a verbal agreement between her and the petitioner's Lifestyle Section Editor. Moreover, it was evident that private respondent was not required to report to the office eight (8) hours a day. Further, it is not disputed that she stayed in New York for six (6) months without petitioner's permission as to her leave of absence nor was she given any disciplinary action for the same. These undisputed facts negate private respondent's claim that she is an employee of petitioner.
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> Moreover, with regards (sic) to the control test, the public respondent NLRC's ruling that the guidelines given by petitioner PDI for private respondent to follow, e.g. in terms of space allocation and length of article, is not the form of control envisioned by the guidelines set by the Supreme Court. The length of the article is obviously limited so that all the articles to be featured in the paper can be accommodated. As to the topic of the article to be published, it is but logical that private respondent should not write morbid topics such as death because she is contributing to the lifestyle section. Other than said given limitations, if the same could be considered limitations, the topics of the articles submitted by private respondent were all her choices. Thus, the petitioner PDI in deciding to publish private respondent's articles only controls the result of the work and not the means by which said articles were written.

> As such, the above facts failed to measure up to the control test necessary for an employer-employee relationship to exist.[15]

Petitioner's Motion for Reconsideration was denied in a Resolution dated September 11, 2002. She then filed the present Petition for Review.

In a Resolution dated April 29, 2005, the Court, without giving due course to the petition, ordered the Labor Arbiter to clarify the amount of the award due petitioner and, thereafter, ordered PDI to post the requisite bond. Upon compliance therewith, the petition would be given due course. Labor Arbiter Amansec clarified that the award under the Decision amounted to P15,350.00. Thus, PDI posted the requisite bond on January 25, 2007.[16]

We shall initially dispose of the procedural issue raised in the Petition.

Petitioner argues that the CA erred in not dismissing outright PDI's Petition for *Certiorari* for PDI's failure to post a cash or surety bond in violation of Article 223 of the Labor Code.

This issue was settled by this Court in its Resolution dated April 29, 2005.[17] There, the Court held:

> But while the posting of a cash or surety bond is jurisdictional and is a condition sine qua non to the perfection of an appeal, there is a plethora of jurisprudence recognizing exceptional instances wherein the Court relaxed the bond requirement as a condition for posting the appeal.
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> In the case of *Taberrah v. NLRC,* the Court made note of the fact that the assailed decision of the Labor Arbiter concerned did not contain a computation of the monetary award due the employees, a circumstance which is likewise present in this case. In said case, the Court stated,
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> As a rule, compliance with the requirements for the perfection of an appeal within the reglamentary (sic) period is mandatory and jurisdictional. However, in National Federation of Labor Unions v. Ladrido as well as in several other cases, this Court relaxed the requirement of the posting of an appeal bond within the reglementary period as a condition for perfecting the appeal. This is in line with the principle that substantial justice is better served by allowing the appeal to be resolved on the merits rather than dismissing it based on a technicality.
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> The judgment of the Labor Arbiter in this case merely stated that petitioner was entitled to backwages, 13th month pay and service incentive leave pay without however including a computation of the alleged amounts.
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> x x x x
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> In the case of *NFLU v. Ladrido III,* this Court postulated that "private

> respondents cannot be expected to post such appeal bond equivalent to the amount of the monetary award when the amount thereof was not included in the decision of the labor arbiter." The computation of the amount awarded to petitioner not having been clearly stated in the decision of the labor arbiter, private respondents had no basis for determining the amount of the bond to be posted.
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> Thus, while the requirements for perfecting an appeal must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business, the law does admit of exceptions when warranted by the circumstances. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. But while this Court may relax the observance of reglementary periods and technical rules to achieve substantial justice, it is not prepared to give due course to this petition and make a pronouncement on the weighty issue obtaining in this case until the law has been duly complied with and the requisite appeal bond duly paid by private respondents.[18]

Records show that PDI has complied with the Court's directive for the posting of the bond;[19] thus, that issue has been laid to rest.

We now proceed to rule on the merits of this case.

The main issue we must resolve is whether petitioner is an employee of PDI, and if the answer be in the affirmative, whether she was illegally dismissed.

We rule for the respondents.

The existence of an employer-employee relationship is essentially a question of fact.[20] Factual findings of quasi-judicial agencies like the NLRC are generally accorded respect and finality if supported by substantial evidence.[21]

Considering, however, that the CA's findings are in direct conflict with those of the Labor Arbiter and NLRC, this Court must now make its own examination and evaluation of the facts of this case.

It is true that petitioner herself admitted that she "was not, and [had] never been considered respondent's employee because the terms of works were arbitrarily decided upon by the respondent."[22] However, the employment status of a person is defined and prescribed by law and not by what the parties say it should be.[23]

This Court has constantly adhered to the "four-fold test" to determine whether there exists an employer-employee relationship between parties.[24] The four elements of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct.[25]

Of these four elements, it is the power of control which is the most crucial[26] and most determinative factor,[27] so important, in fact, that the other elements may