557 Phil. 789

THIRD DIVISION

[G.R. No. 176627, August 24, 2007]

GLORY PHILIPPINES, INC., PETITIONER, VS. BUENAVENTURA B. VERGARA AND ROSELYN T. TUMASIS, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This petition[1] for review on *certiorari* assails the September 18, 2006 Decision[2] of the Court of Appeals in CA-G.R. SP No. 73377 which set aside the December 20, 2001 Decision and July 22, 2002 Order of the National Labor Relations Commission in NLRC NCR CA No. 022914-00 and declared that respondents Buenaventura B. Vergara and Roselyn T. Tumasis were illegally dismissed; and the February 6, 2007 Resolution[3] denying the motion for reconsideration.

Petitioner Glory Philippines, Inc. manufactures money-counting machines. In June 1998, it created a Parts Inspection Section (PIS) tasked to inspect the machine parts for exportation to its exclusive buyer, Glory Limited Japan (Glory Japan).

Petitioner hired respondents on July 6, 1998, allegedly as members of the PIS. However, the employment contracts[4] which they signed only on August 18, 1998, indicated them as Production Operators in the Production Section with a daily wage of Php188.00. The contracts covered the period from July 31 to August 30, 1998.

Thereafter, respondents' employment contracts were extended on a monthly basis. For the periods from August 31 to October 20, 1998, and October 21 to November 30, 1998, respondents signed their respective employment contracts designating them as members of the PIS. From December 1, 1998 to April 27, 1999, respondents performed the same duties and responsibilities despite the absence of employment contracts. On April 27, 1999, however, they were each made to sign employment contracts[5] covering the period from February 28 to April 30, 1999.

On April 26, 1999,[6] petitioner's President, Mr. Takeo Oshima, informed the Assistant Manager that the contractual employees in the PIS would no longer be needed by the company as Glory Japan had cancelled its orders.

Nevertheless, despite the alleged lack of need for respondents' services, petitioner claimed that it reluctantly agreed to extend respondents' employment due to their insistent pleas. Thus, for the period from May 1 to May 15, 1999, respondents signed employment contracts with a higher wage of Php200.00 a day.

Respondents claimed that they continued to work until May 25, 1999 when, at the close of working hours, petitioner's security guard advised them that their employment had been terminated and that they would no longer be allowed to enter

the premises. Consequently, on May 27, 1999, they filed separate complaints for illegal dismissal with the Department of Labor and Employment, Region IV. The cases were subsequently referred to the National Labor Relations Commission (NLRC) for resolution.

On October 29, 1999, the Labor Arbiter rendered a decision[7] finding that respondents were regular employees because they performed activities desirable to the usual business or trade of petitioner for almost eleven (11) months; and that they were illegally dismissed for lack of just cause and non-observance of due process. Thus:

> Hence, in accordance with Art. 280, we believe as we ought to believe that complainants [herein respondents] were regular employees since their engagement was not fixed for a specific project or undertaking for a particular season. As regular employees, complainants had all the rights to security of tenure.
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> x x x x
>
> After a careful perusal of the record of this case, we could not find any glimpse of just cause and the observance of due process before and during the termination of complainants' services. In this case, only general allegations were asserted by respondent such as "declining order from Glory Japan coupled with poor work performance of complainants" to justify the dismissal of the latter. This afterthought averment, in the absence of any substantial evidence to prove respondent's defense, should be considered as empty allegation and must miserably fail.
>
> Thus, we declare as we ought to declare that the dismissal of complainants Vergara and Tumasis were (sic) illegal in the absence of any just cause as enunciated in Art. 282 and the non-observance of due process in the termination of complainants' services.[8]

On appeal, the NLRC affirmed the findings of the Labor Arbiter. However, upon motion for reconsideration, the NLRC reversed and set aside its earlier decision[9] and dismissed the complaint for lack of merit. The NLRC ruled that respondents were project employees and that their employment was terminated upon expiration of their employment contracts. Respondents' motion for reconsideration was denied hence, they filed a petition for *certiorari* before the Court of Appeals. On September 18, 2006, the appellate court granted the petition, as follows:

> WHEREFORE, the PETITION FOR *CERTIORARI* IS GRANTED.
>
> The DECISION dated December 20, 2001 and the ORDER dated July 22, 2002 are SET ASIDE and the DECISION of Labor Arbiter Dominador B. Medroso, Jr. dated October 29, 1999 is REINSTATED subject to the following MODIFICATIONS:
>
> 1. Should the reinstatement of the petitioners [herein respondents] be no longer feasible because the section/division to which they used to be assigned no longer exists, separation pay equivalent to 1 month salary for every year of service from the time of dismissal

until finality of this DECISION shall be paid;

2. Full backwages to be paid to the petitioners shall be from the time of dismissal until actual reinstatement or, in case separation pay is proper, until finality of this DECISION; and

3. Other monetary awards granted in the DECISION dated October 29, 1999 shall be paid reckoned from the start of their employment until their actual reinstatement or, in case separation pay is proper, until finality of this DECISION.

The case is remanded to the Labor Arbiter for the prompt computation of the benefits in favor of the petitioners as hereby determined.

The private respondent shall pay costs of suit.

SO ORDERED.[10]

Petitioner's motion for reconsideration was denied hence, this petition raising the following issues:[11]

A.

THE COURT OF APPEALS COMMITTED SERIOUS AND MANIFEST ERROR IN AFFIRMING THE LABOR ARBITER'S DECISION FINDING THAT RESPONDENTS ARE REGULAR EMPLOYEES OF THE PETITIONER

B.

THE COURT OF APPEALS COMMITTED SERIOUS AND MANIFEST ERROR IN AFFIRMING THE LABOR ARBITER'S DECISION FINDING THAT RESPONDENTS WERE ILLEGALLY DISMISSED

C.

THE COURT OF APPEALS COMMITTED SERIOUS AND MANIFEST ERROR IN AFFIRMING THE LABOR ARBITER'S DECISION FINDING THAT RESPONDENTS ARE ENTITLED TO BACKWAGES, SEPARATION PAY, 13TH MONTH PAY AND SERVICE INCENTIVE LEAVE PAY

Petitioner claims that respondents were contractual and/or project employees because their employment was dependent on the transaction with Glory Japan. Respondents, on the other hand, claim that they were regular employees and that they were dismissed without just or authorized cause and due process of law.

The issues for resolution are: 1) whether respondents were regular employees; and 2) whether respondents were illegally dismissed.

The petition lacks merit.

In *Perpetual Help Credit Cooperative, Inc. v. Faburada*,[12] we explained that there are three kinds of employees as provided under Article 280 of the Labor Code, thus:

Article 280 of the Labor Code provides for three kinds of employees: (1) regular employees or those who have been engaged to perform activities

> which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season; and (3) casual employees or those who are neither regular nor project employees x x x.[13]

There is no merit in petitioner's claim that respondents were project employees whose employment was coterminous with the transaction with Glory Japan.

In *Grandspan Development Corporation v. Bernardo*,[14] the Court held that the principal test for determining whether particular employees are properly characterized as "project employees," as distinguished from "regular employees," is whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration and scope of which were specified at the time the employees were engaged for that project. As defined, project employees are those workers hired (1) for a specific project or undertaking, and (2) the completion or termination of such project or undertaking has been determined at the time of engagement of the employee.[15]

In the instant case, respondents' employment contracts failed to state the specific project or undertaking for which they were allegedly engaged. While petitioner claims that respondents were hired for the transaction with Glory Japan, the same was not indicated in the contracts. As correctly observed by the Court of Appeals, nothing therein suggested or even hinted that their employment was dependent on the continuous patronage of Glory Japan.[16]

Further, the employment contracts did not indicate the duration and scope of the project or undertaking as required by law. It is not enough that an employee is hired for a specific project or phase of work to qualify as a project employee. There must also be a determination of, or a clear agreement on, the completion or termination of the project at the time the employee was engaged,[17] which is absent in this case.

Respondents were given *pro forma* employment contracts which were repeatedly renewed upon petitioner's behest. Respondents were hired on July 6, 1998 but signed their initial employment contracts only on August 18, 1998. The contracts covered the period from July 31 to August 30, 1998 and respondents were designated therein as Production Operators. Thereafter, respondents were hired as members of the PIS and their employment contracts were extended several times, to wit: from August 31 to October 20, 1998; from October 21 to November 30, 1998; from February 28 to April 30, 1999; and, from May 1 to May 15, 1999.

It bears stressing that from December 1, 1998 to April 27, 1999, respondents reported for work despite the absence of employment contracts. On April 27, 1999, however, they were belatedly made to sign employment contracts for the period from February 28 to April 30, 1999. Although petitioner's transaction with Glory Japan was terminated sometime in April 1999, yet respondents were allowed to work without interruption until May 25, 1999. In fact, petitioner even paid them