

SECOND DIVISION

[G.R. NO. 147566, December 06, 2006]

SAN MIGUEL CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND RAFAEL MALIKSI RESPONDENTS.

DECISION

GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner San Miguel Corporation (SMC) seeks the reversal and setting aside of the Decision^[1] dated September 30, 1999 of the Court of Appeals (CA) in *CA-G.R. SP No. 50321*, as reiterated in its Resolution^[2] of March 20, 2001, affirming in toto an earlier decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 005478-93, entitled "*Rafael C. Maliksi v. San Miguel Corporation and/or Philippine Software Services & Education Center.*" The affirmed NLRC decision overturned that of the Labor Arbiter and declared the herein private respondent Rafael Maliksi (Maliksi) a regular employee of the petitioner and ordered the latter to reinstate him with benefits.

As found by the NLRC and subsequently adopted by the CA, the facts are as follows:

On 16 October 1990, Rafael M. Maliksi filed a complaint against the San Miguel Corporation-Magnolia Division, herein referred to as SMC and Philippine Software Services and Education Center herein referred to as PHILSSEC to compel the said respondents to recognize him as a regular employee. He amended the complaint on 12 November 1990 to include the charge of illegal dismissal because his services were terminated on 31 October 1990.

The complainant's employment record indicates that he rendered service with Lipercon Services from 1 April 1981 to February 1982 as budget head assigned to SMC-Beer Division, then from July 1983 to April 1985 with Skillpower, Inc., as accounting clerk assigned to SMC-Magnolia Division, then from October 1988 to 1989 also with Skillpower, Inc. as acting clerk assigned to SMC-Magnolia Finance, and from October 1989 to 31 October 1990 with PHILSSEC assigned to Magnolia Finance as accounting clerk. The complainant considered himself as an employee of SMC-Magnolia. Lipercon Services, Skillpower, Inc. and PHILSSEC are labor-only contractors and any one of which had never been his employer. His dismissal, according to him, was in retaliation for his filing of the complaint for regularization in service. His dismissal was illegal there being no just cause for the action. He was not accorded due process neither was his dismissal reported to the Department of Labor and Employment.

PHILSSEC disclaimed liability. As an entity catering (sic) computer systems and program for business enterprises, it has contracted with SMC-Magnolia to computerize the latter's manual accounting reporting systems of its provincial sales. PHILSSEC then conducted a three phase analysis of SMC-Magnolia set up: first the computer needs of the firm was (sic) determined; then, the development of computer systems or program suitable; and, finally, set up the systems and train the employees to operate the same. In all these phases, PHILSSEC uses its computer system and technology and provided the necessary manpower to compliment the transfer of the technology to SMC-Magnolia. Complainant Maliksi was one of those employed by PHILSSEC whose principal function was the manual control of data needed during the computerization. Like all assigned to the project, the complainant's work was controlled by PHILSSEC supervisors, his salary paid by the agency and he reported directly to PHILSSEC. The computerization project was completed on 31 October 1990, and so, the complainant was terminated on the said date.

SMC, on the other hand, submitted its position. In the contract SMC entered with PHILSSEC, the latter undertook to set up the computerization of the provincial sales reporting system of Magnolia Division. To carry out the task, PHILSSEC utilized 3 computer programmers and the rest were data encoders. The complainant being one of the compliments (sic) performed the following functions:

xxx xxx xxx

SMC likewise contends that PHILSSEC exercised exclusive managerial prerogative over the complainant as to hiring, payment of salary, dismissal and most importantly, the control over his work. SMC was interested only in the result of the work specified in the contract but not as to the means and methods of accomplishing the same. Moreover, PHILSSEC has substantial capital of its own. It has an IBM system, 3 computers, 17 IBM or IBM-compatible computers; it has a building where the computer training center and main office are located. What it markets to clients are computer programs and training systems on computer technology and not the usual labor or manpower supply to establishment concerns. Moreover, what PHILSSEC set up employing the complainant, among others, has no relation to the principal business of SMC, which is food and beverage. It was a single relationship between the people utilized by PHILSSEC and SMC...' [3]

The Labor Arbiter declared Maliksi a regular employee of PHILSSEC and absolved SMC from liability. Dispositively, the Labor Arbiter's decision reads:

WHEREFORE, the complainant, Rafael Maliksi, is recognized as a regular employee of Philippine Software Services and Education Center which respondent is ordered to reinstate him to a job of the same level as his previous position in any of the projects where there is a vacancy and without loss of seniority rights. A five months backwages is awarded because the prolonged suspension from his work was brought about by his refusal to take any job offered by PHILSSEC earlier in the proceedings

of this case. The respondent, SMC-Magnolia Division, is exempted from any liability as the complaint against the said corporation is dismissed for lack of merit.

SO ORDERED.^[4]

Maliksi appealed to the NLRC. In turn, in a decision dated January 26, 1998, the NLRC reversed that of the Labor Arbiter by declaring Maliksi a regular employee of the petitioner and ordering the latter to reinstate him without loss of seniority rights and with full benefits, to wit:

WHEREFORE, as recommended, the decision below is hereby SET ASIDE. Accordingly, judgment is hereby rendered directing respondent SMC-Magnolia Division to reinstate complainant as a regular employee without loss of seniority rights and other privileges and to pay complainant full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to time of his actual reinstatement, plus 10% of the total money award for and attorney's fees.

SO ORDERED.^[5]

From the aforementioned decision of the NLRC, SMC went on *certiorari* to the CA in CA-G.R. SP No. 50321.

As stated at the outset, the CA, in the herein assailed Decision^[6] dated September 30, 1999, affirmed *in toto* that of the NLRC. In so doing, the CA found SMC to have utilized PHILSSEC, Lipercon Services, Inc. (Lipercon) and Skillpower, Inc. (Skillpower) as conduits to circumvent Article 280 of the Labor Code, employing Maliksi as contractual or project employee through these entities, thereby undermining his right to gain regular employment status under the law. The appellate court echoed the NLRC's assessment that Maliksi's work was necessary or desirable in the business of SMC in its Magnolia Division, for more than the required one-year period. It affirmed the NLRC's finding that the three (3) conduit entities adverted to, Lipercon and Skillpower, are labor-only contractors such that Maliksi's previous employment contracts with SMC, through these two entities, are deemed to have been entered into in violation of labor laws. Consequently, Maliksi's employment with SMC became permanent and regular after the statutory period of one year of service through these entities. The CA concluded that on account of his past employment contracts with SMC under Lipercon and Skillpower, Maliksi was already a regular employee of SMC when he entered into SMC's computerization project as part of the PHILSSEC project complement.

With its motion for reconsideration having been denied by the CA in its Resolution of March 20, 2001, SMC is now with this Court via the present recourse on the following assigned errors:

I

The Court of Appeals gravely erred in declaring private respondent a regular employee of petitioner SMC despite its findings that PHILSSEC, the contractor that employed private respondent, is an independent job

contractor.

Corollarily, the declaration of the Honorable Court of Appeals that private respondent is a regular employee of petitioner SMC proceeds from the erroneous premise that private respondent was already a regular employee of SMC when he was hired by the independent contractor PHILSSEC. Having been placed in petitioner SMC by a supposed labor-only contractor, for just five months and for a different job, three years after his last assignment therein, private respondent had not thereby become a regular employee of petitioner SMC.

II

The Court of Appeals gravely erred in ultimately resolving the case upon the principle that "all doubts must be resolved in favor of labor"; certainly, protection to labor does not imply sanctioning a plain injustice to the employer, particularly where private respondent was shown to have stated falsehoods and committed malicious intercalations and misrepresentations.

III

The Court of Appeals gravely erred in declaring that private respondent was not part of the of the personnel group in the computerization program of petitioner SMC under PHILSSEC.

We **DENY**.

SMC concedes that Maliksi, before his employment with PHILSSEC, worked in SMC **from November 1988 to April 1990**, but as employee of Skillpower^[7] and that he was previously assigned to SMC **between 1981 up to February 1985**, "for periods spread apart."^[8] The Labor Arbiter found, as earlier stated, that Maliksi rendered service with Lipercon **from 1 April 1981 to February 1982 as budget head** assigned to SMC-Beer Division; **from July 1983 to April 1985** with Skillpower **as accounting clerk** assigned to SMC-Magnolia Division, then **from October 1988 to 1989**^[9] also with Skillpower **as acting clerk** assigned to SMC-Magnolia Finance, and **from October 1989 to 31 October 1990** with PHILSSEC assigned to Magnolia Finance **as accounting clerk**. In all, it appears that, while under the employ of either Lipercon or Skillpower, Maliksi has undisputedly rendered service with SMC for **at least three years and seven months**.^[10]

The Court takes judicial notice of the fact that Lipercon and Skillpower were declared to be labor-only contractors,^[11] providing as they do manpower services to the public for a fee. The existence of an employer-employee relationship is factual and we give due deference to the factual findings of both the NLRC and the CA that an employer-employee relationship existed between SMC (or its subsidiaries) and Maliksi. Indeed, having served SMC for an aggregate period of more than three (3) years through employment contracts with these two labor contractors, Maliksi should be considered as SMC's regular employee. The hard fact is that he was hired and re-hired by SMC to perform administrative and clerical work that was necessary

to SMC's business on a daily basis. In *Bustamante v. National Labor Relations Commission*, ^[12] we ruled:

In the case at bar, petitioners were **employed at various periods from 1985 to 1989 for the same kind of work they were hired to perform in September 1989. Both the labor arbiter and the respondent NLRC agree that petitioners were employees engaged to perform activities necessary in the usual business of the employer.** As laborers, harvesters or sprayers in an agricultural establishment which produces high grade bananas, petitioners' tasks are indispensable to the year-round operations of respondent company. This belies the theory of respondent company that the employment of petitioners was terminated due to the expiration of their probationary period in June 1990. If at all significant, the contract for probationary employment was utilized by respondent company as a chicanery to deny petitioners their status as regular employees and to evade paying them the benefits attached to such status. Some of the petitioners were hired as far back as 1985, although the hiring was not continuous. **They were hired and re-hired in a span of from two to four years to do the same type of work which conclusively shows the necessity of petitioners' service to the respondent company's business.** Petitioners have, therefore, become regular employees after performing activities which are necessary in the usual business of their employer. But, even assuming that the activities of petitioners in respondent company's plantation were not necessary or desirable to its business, we affirm the public respondent's finding that all of the complainants (petitioners) have rendered non-continuous or broken service for more than one (1) year and are consequently considered regular employees.

We do not sustain public respondent's theory that private respondent should not be made to compensate petitioners for backwages because its termination of their employment was not made in bad faith. **The act of hiring and re-hiring the petitioners over a period of time without considering them as regular employees evidences bad faith on the part of private respondent.** The public respondent made a finding to this effect when it stated that the subsequent re-hiring of petitioners on a probationary status "clearly appears to be a convenient subterfuge on the part of management to prevent complainants (petitioners) from becoming regular employees." (Emphasis supplied)

It is worth noting that, except for the computerization project of PHILSSEC, petitioner did not make any insinuation at all that the services of Maliksi with SMC was project-related such that an employment contract with Lipercon and Skillpower was necessary.

In *Madriaga v. Court of Appeals*, ^[13] the Court, confronted with the same issue now being addressed, declared that regularization of employment in SMC should extend to those whose situation is similar to the complainants in said case. We wrote:

This is the third time that the parties have invoked the power of this Court to decide the labor dispute involved in this case. The generative facts of the case are as follows: