511 Phil. 232

SECOND DIVISION

[G.R. No. 144619, November 11, 2005]

C. PLANAS COMMERCIAL AND/OR MARCIAL COHU, PETITIONERS, VS. NATIONAL LABOR RELATIONS TINGA, AND COMMISSION (SECOND DIVISION), ALFREDO OFIALDA, DIOLETO MORENTE AND RUDY ALLAUIGAN, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* filed by C. Planas Commercial and/or Marcial Cohu, (petitioners) assailing the Decision of the Court of Appeals (CA) dated January 19, 2000[1] which affirmed *in toto* the decision of the National Labor Relations Commission (NLRC) and the Resolution dated August 15, 2000[2] denying petitioners' motion for reconsideration.

On September 14, 1993, Dioleto Morente, Rudy Allauigan and Alfredo Ofialda (private respondents) together with 5 others[3] filed a complaint for underpayment of wages, nonpayment of overtime pay, holiday pay, service incentive leave pay and premium pay for holiday and rest day and night shift differential against petitioners with the Arbitration Branch of the NLRC. The case was docketed as NLRC Case No. 00-09-05804-93.[4]

In their position paper, private respondents alleged that petitioner Cohu, owner of C. Planas Commercial, is engaged in wholesale of plastic products and fruits of different kinds with more than 24 employees; that private respondents were hired by petitioners on January 14, 1990, May 14, 1990 and July 1, 1991, respectively, as helpers/laborers; that they were paid below the minimum wage law for the past 3 years; that they were required to work for more than 8 hours a day without overtime pay; that they never enjoyed holiday pay and did not have a rest day as they worked for 7 days a week; and they were not paid service incentive leave pay although they had been working for more than one year. Private respondent Ofialda asked for night shift differential as he had worked from 8 p.m. to 8 a.m. the following day for more than one year.

Petitioners filed their comment admitting that private respondents were their helpers who used to accompany the delivery trucks and helped in the loading and unloading of merchandise being distributed to clients; that they usually started their work from 10 a.m. to 6 p.m.; that private respondents stopped working with petitioners sometime in September 1993 as they were already working in other establishments/stalls in Divisoria; that they only worked for 6 days a week; that they were not entitled to holiday and service incentive leave pays for they were employed in a retail and service establishment regularly employing less than ten workers.

On December 6, 1994, a decision[5] was rendered by the Labor Arbiter dismissing private respondents' money claims for lack of factual and legal basis. He made the following findings:

> The basic issue raised before us is whether or not complainants are entitled to the money claims.
>
> The rule in this jurisdiction is that employers who are regularly employing not more than ten workers in retail establishments are exempt from the coverage of the minimum wage law.
>
> In connection therewith and in consonance with Sec. 1, Rule 131 of the Rules of Court, it is incumbent upon the party to support affirmative allegation that an employer regularly employs more than ten (10) workers.
>
> In the case at bar, complainants failed to substantiate their claim that the respondent establishment regularly employs twenty (sic) (24) workers.
>
> Accordingly, we have no factual basis to grant salary differentials to complainants. In the same context, under Sec. 1 (b), Rule IV and Sec. 1(g), Rule V of the Implementing Rules of the Labor Code, complainants are not entitled to legal holiday pay and service incentive leave pay.
>
> We also do not have sufficient factual basis to award overtime pay and premium pay for holiday and rest day because complainants failed to substantiate that they rendered overtime and during rest days.[6]

Private respondents filed their appeal with the NLRC which was opposed by petitioners. However, pending the appeal, private respondents Morente[7] and Allauigan[8] filed their respective motions to dismiss with release and quitclaim before the NLRC.

On September 30, 1997, the NLRC rendered its decision,[9] the dispostive portion of which reads:

> WHEREFORE, in view of all the foregoing considerations, the decision appealed from should be, as it is hereby, MODIFIED by directing the respondent to pay Alfredo Ofialda, Diolito Morente and Rudy Allauigan the total amount of Seventy-Five Thousand One Hundred Twenty Five Pesos (P75,125.00) representing their combined salary differentials, holiday pay, and service incentive leave pay.

The NLRC made the following ratiocinations:

> ... On claims for underpayment/non-payment of legally mandated wages and fringe benefits where exemption from coverage of the minimum wage law is put up as a defense, he who invokes such an exemption (usually the employer) has the burden of showing the basis for the exemption like for instance the fact of employing regularly less than ten workers.

In the instant case, complainants alleged that despite employing more than twenty-four (24) workers in his establishment, hence covered by the minimum wage law, nevertheless the individual respondent did not pay his workers the legal rates and benefits due them since their employment. By way of answer, respondents countered that they employ less than ten (10) persons, hence the money claims of complainants lack factual and legal basis.

Stated differently, against complainants' charge of underpayment in wages and non-payment of fringe benefits legally granted to them, the respondents raised the defense of exemption from coverage of the minimum wage law and in support thereof alleged that they regularly employed less than ten (10) workers to serve as basis for their exemption under the law, they (respondents) must prove that they employed less than ten workers, instead of more than twenty-four (24) workers as alleged by the complainants.

However, apart from their allegation, respondents presented no evidence to show the number of workers they employed regularly. This failure is fatal to respondents' defense. This in turn brings us to the question of whether the complainants were underpaid and unpaid of legal holiday pay and service incentive leave pay due them.

Stated earlier are the different amounts that each complainant was receiving by way of salary on certain periods of their employment with respondents, which amounts according to complainants are "way below the minimum wage then prevailing." Considering that respondents failed to present the payrolls or vouchers which could prove otherwise, the money claims deserve favorable consideration.

Taking note of the 3 year prescription, the period covered is from September 14, 1990 to September 14, 1993 when the instant case was filed, and based on a 6-day work per week, the underpayment (salary differential), legal holiday pay, and service incentive leave pay due to complainants, as computed, are as follows:

	Salary Diff.	HolidayPay	SILP
1. A. OFIALDA	P14,934.00	P2,362.00	P1,180.00
2. D. MORENTE	23,964.00	3,258.00	1,730.00
3. ALLAUIGAN	22,609.00	3,258.00	1,730.00

With respect to the other claims, i.e., overtime pay and premium pay for holiday and rest day, We find no reason to disturb the Labor Arbiter's ruling thereon, that there is no sufficient factual basis to award the claims because complainants failed to substantiate that they rendered overtime and during rest days. These claims, unlike claims for underpayment and non-payment of fringe benefits mandated by law, need to be proven by the claimants.[10]

Petitioners filed a petition for *certiorari* [11] with prayer for temporary restraining order and preliminary injunction before this Court on November 26, 1997. Respondents were required to file their Comment but only public respondent NLRC,

through the Solicitor General, complied therewith. In a Resolution dated June 28, 1999,[12] the petition was referred to the CA pursuant to our ruling in *St. Martin Funeral Homes vs. NLRC.*

On January 19, 2000,[13] the CA denied the petition for lack of merit and affirmed *in toto* the NLRC decision. It said:

> Having claimed exemption from the coverage of the minimum wage laws or order, it was incumbent upon petitioner to prove such claim. Apart from simply denying private respondents' allegation that it employs more than 24 workers in its business, petitioner failed to adduce evidence to prove that it is, indeed, a "retail establishment" which employs less than ten (10) employees. Its failure to present records of its workers and their respective wages gives rise to the presumption that these are adverse to its claims. Indeed, it is hard to believe that petitioner does not keep such records. More so, considering private respondents claim that petitioner "employs more than twenty four (24) employees and engaged in both wholesale and retail business of fruits by volume on CONTAINER BASIS, not by price of fruit, but by container size retail, involving millions of pesos capital, fruits coming from China, Australia and the United States" (p. 170, Rollo).
>
> Needless to say, the inclusion of respondents Morente and Allauigan in the NLRC award is in order. In its decision, public respondent awarded P75,125.00, representing the combined salary differentials, holiday pay and service incentive leave pay of all three (3) private respondents. Of this, P28,952.00 is earmarked for respondent Morente, and P27,597.00 for respondent Allauigan, both of whom executed quitclaims after receiving P3,000.00 and P6,000.00 respectively, from petitioner.
>
> On this score, the Court quotes with approval the arguments advanced by the Solicitor General thus:
>
> > While a compromise agreement or amicable settlement is not against public policy per se it must be shown however that it was "voluntarily entered into and represents a reasonable settlement, and the consideration for the quitclaim is credible and reasonable" (Santiago v. NLRC, 198 SCRA 111 [1991]). For the law usually looks with disfavor upon quitclaims and releases executed by employees usually resulting from a compromise with their employers. (Velasco v. DOLE, 200 SCRA 201 [1991]). This is so because the employers and the employees obviously do not stand on equal footing. Driven against the wall by the employer, the employee is in no position to resist the money offered. (Lopez Sugar Corp v. FFW-PLU, 189 SCRA 179 [1990]).
> >
> > Thus, Fuentes v. NLRC, 167 SCRA 767 (1988) enunciates:
> >
> > In the absence of any showing that the compromise settlement and the quitclaims and releases entered into and made by the employees were free, fair and reasonable-

> especially as to the amount or consideration given by the employer in exchange therefore, the fact that they executed the same and received their monetary benefits thereunder does not militate against them. The Law does not consider as valid any agreement to receive less compensation than what a worker is entitled to receive.
>
> In the case at bar, it will be noticed that the vouchers dated September 13, 1995 and September 20, 1996 (pp. 194 and 197, NLRC Record), submitted by petitioners (pp. 191-192, Record), show that private respondent Allauigan was only paid P6,000.00 and Morente, P3,000.00 --- when they are legally entitled to receive P28,952.00 and P27,597.00, respectively. Under the circumstances, subject compromise settlements cannot be considered valid and binding upon the NLRC as they do not represent fair and reasonable settlements, nor do they demonstrate voluntariness on the part of private respondents Morente and Allauigan. These employees should still be paid the full amounts of their salary differentials, holiday pay and service incentive leave pay less the amounts they had already received under the compromise settlements with petitioners (pp. 174-175, Rollo).

> Parenthetically, the Court notes that petitioner availed itself of this remedy without first seeking a reconsideration of the assailed decision. As a general rule, certiorari will not lie unless an inferior court, has through a motion for reconsideration, a chance to correct the errors imputed to it. While the rule admits of exceptions, petitioner has not shown any reason for this Court not to apply said rule, which would have justified outright dismissal of the petition were it not for the Court's desire to resolve the case not on a technicality but on the merits.[14]

Petitioners' motion for reconsideration was denied in a Resolution dated August 15, 2000.[15]

Hence, the instant petition for review on *certiorari* filed by petitioners.

Petitioners insist that C. Planas Commercial is a retail establishment principally engaged in the sale of plastic products and fruits to the customers for personal use, thus exempted from the application of the minimum wage law; that it merely leases and occupies a stall in the Divisoria Market and the level of its business activity requires and sustains only less than ten employees at a time. Petitioners contend that private respondents were paid over and above the minimum wage required for a retail establishment, thus the Labor Arbiter is correct in ruling that private respondents' claim for underpayment has no factual and legal basis. Petitioners claim that since private respondents alleged that petitioners employed 24 workers, it was incumbent upon them to prove such allegation which private respondents failed to do.

Petitioners also contend that the CA erred in applying strictly the rules of evidence against them by holding that it was incumbent upon them to prove that their company is exempted from the minimum wage law. They contend that they could