511 Phil. 279

SECOND DIVISION

[G.R. No. 157656, November 11, 2005]

ARNULFO C. ACEVEDO, PETITIONER, VS. ADVANSTAR COMPANY INC. AND/OR FELIPE LOI, MANAGER, AND TONY JALAPADAN, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

The Advanstar Company Inc. (ACI) was engaged in the distribution and sale of various brands of liquor and alcoholic spirits, including the Tanduay Brand. Felipe Loi was employed as its manager. To effectively launch its vigorous marketing operations, ACI hired several salesmen, one of whom was Tony Jalapadan. On September 1, 1994, ACI executed an Agreement for the Sale of Merchandise[1] with Jalapadan for a period of one year, renewable for another year under the same terms and conditions.

Under the agreement, the parties agreed, *inter alia,* that Jalapadan would promote and sell products of ACI, solicit from customers and outlets within his designated territory, collect payments from such customers and account the same to ACI. Jalapadan was provided with a 6-wheeler truck to facilitate the sale and delivery of products to customers and outlets from his base of operations in Ozamis City to Zamboanga del Sur and Zamboanga del Norte. Jalapadan was also authorized to employ and discharge a driver and other assistants as he deemed necessary. It was stipulated, however, that the hired hands would be considered his employees, and that he alone would be liable for their compensation and actual expenses, including meals while on duty. As of July 1997, Jalapadan had employed and fired 14 drivers.

On August 5, 1997, Jalapadan hired Arnulfo Acevedo[2] as the driver of the truck assigned to him by ACI. Acevedo was tasked to sell and deliver stocks to outlets and customers, collect payments, and to maintain the truck in good and clean condition. He reported for work from 6:00 a.m. to 8:00 or 9:00 p.m.[3] Aside from Acevedo, Jalapadan also hired a loader *(kargador).*

Acevedo received a daily wage of P152.00 and was paid on a weekly basis. He also enjoyed sick leave privilege, which benefit was convertible into cash. Sometime in June 1998, he received from Jalapadan a salary differential for the period of December 1997 to June 1998, following a P15.00 increase in his daily wage. He received his wages from Jalapadan through vouchers approved by the latter.[4]

Sometime in July 1998, Acevedo failed to comply with Jalapadan's instructions. At that time, they were on their way to Plaridel, Misamis Oriental on board the truck. Jalapadan ordered Acevedo to alight from the truck, and threatened to leave him behind to fend for himself. However, Jalapadan later asked him to return to work[5]

and the latter agreed.

On October 7, 1998, Acevedo failed to report for work. The next day, Jalapadan inquired why he failed to check and wash the truck. Jalapadan berated Acevedo and ordered him to get his personal belongings and leave. Acevedo did as he was told. Later, Jalapadan urged Acevedo to go back to work, stating that they were "one big family," but Acevedo refused.[6] He then signed a Letter[7] dated October 10, 1998, informing Jalapadan that he was resigning effective that date.

However, on October 26, 1998, Acevedo filed a complaint against Jalapadan, ACI and its general manager, Felipe Loi, for illegal dismissal and for the recovery of backwages and other monetary benefits.

In their position paper, respondents ACI and Loi averred that the complainant was Jalapadan's employee as indicated in the agreement between Jalapadan and ACI. It was also pointed out that the Department of Labor and Employment had already ruled in Case No. 08-MA-A-8-230-91 that truck drivers and helpers of salesmen are the employees of such salesmen and not that of a marketing corporation. The respondents also averred that Acevedo was not dismissed; he abandoned his work and later voluntarily resigned as evidenced by his typewritten letter of resignation dated October 10, 1998 addressed to Jalapadan. The said letter was appended to the position paper.[8]

During the hearing, Acevedo testified that on October 10, 1998, Loi, through the cashier, gave him P2,200.00 from his personal fund which, according to Loi, was only goodwill money.[9]

On March 24, 1999, the Labor Arbiter rendered judgment in favor of the complainant. The dispositive portion of the decision reads:

> WHEREFORE, couched on the foregoing considerations, judgment is hereby rendered:
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> 1.) holding that there has been an employer-employee relationship between respondent Advanstar, Inc. and complainant Arnulfo Acevedo, with respondent Tony Jalapadan as agent of the respondent corporation arising from their relationship of labor-only contracting;
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> 2.) declaring that complainant's severance from employment is illegal, causing respondents to have the obligation of reinstating complainant Arnulfo Acevedo back to work without loss of seniority rights and other privileges, immediately even pending appeal; and, directing respondents to pay complainant his full backwages constituting his basic wage and 13th month pay, from the date when he was unlawfully dismissed up to the date of actual or payroll reinstatement of complainant, which partial amount is reflected in paragraph "3" hereof;
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> 3.) ordering respondents Advanstar, Inc. and Tony Jalapadan to pay complainant, jointly and severally, the following:
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> A. Partial backwages..... P30,014.07; and

B. Salary differentials due to unjustified

reduction..... 1,500.00;

TOTAL..... P31,514.07;
=========

4.) directing respondents to pay attorney's fees in the amount of ten (10) percent of the whole amount due complainant, jointly and severally; and

5.) dismissing all other claims of complainant for being divested of merit.

SO ORDERED.[10]

The Labor Arbiter ruled that the agreement of Jalapadan and ACI was a mere subterfuge to escape the latter's obligations and liabilities to its workers, including the complainant, hence, null and void for being contrary to public policy. Moreover, the agreement between the respondents cannot prevail over Articles 106 and 107 of the Labor Code of the Philippines. Thus, according to the Labor Arbiter, respondent Jalapadan was a labor-only contractor of respondent ACI, and as such, the employees of respondent Jalapadan were also its employees. The Labor Arbiter also ruled that the services rendered by the complainant were necessary and desirable to the business of respondent ACI.

The respondents appealed the decision to the National Labor Relations Commission (NLRC). They filed a Manifestation on May 23, 2000, alleging that respondent Jalapadan was an independent contractor of respondent ACI and that, based on Social Security System (SSS) records, the employer of the complainant was respondent Jalapadan. They also pointed out that the complainant submitted his handwritten letter of resignation on October 10, 1998. The respondents appended the following: (a) an affidavit executed by Jalapadan wherein he declared that he was the employer of the complainant and that respondent ACI allowed him to sell its products "on a marked-up price" as his commissions, aside from being granted other incentives; (b) the SSS records of the complainant; and (c) the complainant's handwritten letter of resignation.[11]

The NLRC reversed the Labor Arbiter's ruling. It held that the complainant was an employee of respondent Jalapadan, not of respondent ACI, and that he voluntarily resigned.[12] However, the NLRC failed to resolve the issue of whether respondent Jalapadan was an independent contractor. The complainant filed a motion for reconsideration of the decision, reiterating his claim that although he signed the letters of resignation, he finished only the third grade and could not read, write or understand English.[13] The NLRC denied the motion for lack of merit.

Acevedo then filed a petition for *certiorari* with the Court of Appeals (CA) where he raised the following issues:

A) THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN RESOLVING THAT COMPLAINANT IS NOT AN EMPLOYEE OF RESPONDENT ADVANSTAR;

B) THE HONORABLE COMMISSION SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE COMPLAINANT RESIGNED FROM HIS JOB;

C) THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION AND SERIOUSLY ERRED IN ADMITTING AND APPRECIATING EVIDENCE NOT ADDUCED BEFORE THE LABOR ARBITER; AND

D) THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN APPRECIATING THE ALLEGED TWO RESIGNATION LETTERS OF THE COMPLAINANT PRESENTED BY THE PRIVATE RESPONDENTS.[14]

The petitioner averred that respondent Jalapadan failed to adduce evidence to show that he had substantial capital or investment in the form of tools, equipment, machineries, etc. as to classify him as an independent contractor. If, at all, respondent Jalapadan was a labor-only contractor for respondent ACI.

In their Comment on the petition, the respondents reiterated that the petitioner was not dismissed from his employment; on the contrary, he abandoned his work and later resigned. They reiterated their stand that respondent Jalapadan was an independent contractor.

On June 14, 2002, the CA rendered judgment dismissing the petition for lack of merit, holding that the petitioner voluntarily resigned from his job.[15] However, it failed to resolve the other issues raised by the petitioner. The appellate court, likewise, denied the petitioner's motion for reconsideration of its decision.[16]

The petitioner then filed a petition for review on *certiorari* with this Court, alleging that the CA committed grave abuse of its discretion amounting to excess or lack of jurisdiction in affirming the decision of the NLRC and in not reinstating the decision of the Labor Arbiter.

The pivotal issues in this case are factual: (a) whether the respondent ACI was the employer of respondent Jalapadan; (b) whether the petitioner is the employee of respondent ACI; and (c) whether the petitioner resigned from his employment. Under Rule 45 of the Rules of Court, only questions of law may be raised in and resolved by this Court. The reason for this is that the Court is not a trier of facts; it is not to reexamine and calibrate the evidence on record. Moreover, findings of facts of quasi-judicial bodies like the NLRC, and affirmed by the CA in due course, are conclusive on this Court, unless the aggrieved party establishes that grave abuse of discretion amounting to excess or lack of jurisdiction was committed. Thus, in exceptional cases, this Court may delve into and resolve factual issues. Indeed, the Court has reviewed the records in this case and holds that the findings of the NLRC and that of the CA on substantial matters are contrary to the evidence on record.

On the first and second issues, the petitioner avers that respondent Jalapadan was a labor-only contractor, not an independent contractor, hence, merely an agent of respondent ACI. Consequently, the latter is responsible to the employees hired by respondent Jalapadan as if such employees had been directly employed by it, and, as such, the respondents are solidarily liable for their valid claims. The petitioner notes that the respondents adopted a new defense in the NLRC: that respondent

Jalapadan was an independent contractor and received from respondent ACI commissions or honoraria or incentives as compensation for his services. The respondents even claimed that their agreement was merely *pro forma.*

The petitioner avers that the respondents failed to prove that Jalapadan had substantial capital, investment and tools to engage in job contracting. He insists that he was a labor-only contractor; hence, his employees are actually the employees of respondent ACI. The petitioner insists that applying the "control test," Jalapadan was an employee of respondent ACI; the latter, through Jalapadan, its employee-agent, had supervision and control over the petitioner who drove the truck and maintained it in good condition, which Jalapadan was tasked to do under his agreement with respondent ACI. He posits that even if respondent ACI did not exercise control over Jalapadan, it is enough that it had the right to do so. The petitioner further asserts that he was employed by Jalapadan to drive the truck provided by respondent ACI for the marketing and delivery of its products to the customers in parts of Zamboanga del Norte and del Sur. The use of the truck was essential to the business of both Jalapadan and respondent ACI; thus, the petitioner's job as driver of the truck was usual, necessary and desirable to both Jalapadan and respondent ACI.

While the petitioner admits having received his wages from Jalapadan and that he was hired and fired by the latter, he insists that his wages must have been paid by respondent ACI through Jalapadan. He points out that he received a daily wage of P152.00 or a total of P3,648.00 a month, while the hired truck helper received P4,000.00 a month. However, Jalapadan received P3,590.00 as monthly compensation from respondent ACI under their agreement. Hence, the total amount of P7,648.00 Jalapadan paid the petitioner and the truck helper was much more than the monthly compensation he received from respondent ACI. The petitioner posited that since Jalapadan could not afford to pay his and the truck helper's wages, it was respondent ACI who must have been paying them.

The petitioner asserts that the NLRC acted arbitrarily in taking cognizance of and considering his handwritten letter of resignation dated October 10, 1998 because respondent ACI submitted the same to the NLRC only on appeal. He avers that he could not have understood the contents of the said letter because he merely affixed his thumbmarks thereon. He reiterates that he finished only the third grade and can neither read nor write. Moreover, he signed only one letter of resignation. Even then, it was not his intention to resign because he filed his complaint shortly after signing the said letter. The petitioner belittles the SSS records submitted by the respondents because as shown therein, Jalapadan paid his share of the premiums due only after October 1998.

By way of Comment, the respondents aver that the issues raised by the petitioner are the same issues raised in and already resolved by the NLRC and the CA, whose decisions are in accord with the evidence on record and the law.

The contentions of the petitioner are correct.

The pertinent provision of the Labor Code on labor-only contracting is paragraph 4 of Article 106, which provides: