434 Phil. 524

SPECIAL FIRST DIVISION

[G.R. No. 110524, July 29, 2002]

DOUGLAS MILLARES AND ROGELIO LAGDA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, TRANS-GLOBAL MARITIME AGENCY, INC. AND ESSO INTERNATIONAL SHIPPING CO., LTD. RESPONDENTS.

R E S O L U T I O N

KAPUNAN, J.:

On March 14, 2000, the Court promulgated its decision in the above-entitled case, ruling in favor of the petitioners. The dispositive portion reads, as follows:

> **WHEREFORE,** premises considered, the assailed Decision, dated June 1, 1993, of the National Labor Relations Commission is hereby **REVERSED** and **SET ASIDE** and a new judgment is hereby rendered ordering the private respondents to:
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> (1) Reinstate petitioners Millares and Lagda to their former positions without loss of seniority rights, and to pay full backwages computed from the time of illegal dismissal to the time of actual reinstatement;
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> (2) Alternatively, if reinstatement is not possible, pay petitioners Millares and Lagda separation pay equivalent to one month's salary for every year of service; and,
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> (3) Jointly and severally pay petitioners One Hundred Percent (100%) of their total credited contributions as provided under the Consecutive Enlistment Incentive Plan.
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> SO ORDERED.[1]

A motion for reconsideration was consequently filed[2] by the private respondents to which petitioners filed an Opposition thereto.[3]

In a Minute Resolution dated June 28, 2000, the Court resolved to deny the motion for reconsideration with finality.[4]

Subsequently, the Filipino Association for Mariners Employment, Inc. (FAME) filed a Motion for Leave to Intervene and to Admit a Motion for Reconsideration in Intervention.

Private respondents, meanwhile, also filed a Motion for Leave to File a Second Motion for Reconsideration of our decision.

In both motions, the private respondents and FAME respectively pray in the main that the Court reconsider its ruling that "Filipino seafarers are considered regular

employees within the context of Article 280 of the Labor Code." They claim that the decision may establish a precedent that will adversely affect the maritime industry.

The Court resolved to set the case for oral arguments to enable the parties to present their sides.

To recall, the facts of the case are, as follows:

> Petitioner Douglas Millares was employed by private respondent ESSO International Shipping Company LTD. (Esso International, for brevity) through its local manning agency, private respondent Trans-Global Maritime Agency, Inc. (Trans-Global, for brevity) on November 16, 1968 as a machinist. In 1975, he was promoted as Chief Engineer which position he occupied until he opted to retire in 1989. He was then receiving a monthly salary of US $1,939.00.
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> On June 13, 1989, petitioner Millares applied for a leave of absence for the period July 9 to August 7, 1989. In a letter dated June 14, 1989, Michael J. Estaniel, President of private respondent Trans-Global, approved the request for leave of absence. On June 21, 1989, petitioner Millares wrote G.S. Hanly, Operations Manager of Exxon International Co., (now Esso International) through Michael J. Estaniel, informing him of his intention to avail of the optional retirement plan under the Consecutive Enlistment Incentive Plan (CEIP) considering that he had already rendered more than twenty (20) years of continuous service. On July 13, 1989 respondent Esso International, through W.J. Vrints, Employee Relations Manager, denied petitioner Millares' request for optional retirement on the following grounds, to wit: (1) he was employed on a contractual basis; (2) his contract of enlistment (COE) did not provide for retirement before the age of sixty (60) years; and (3) he did not comply with the requirement for claiming benefits under the CEIP, i.e., to submit a written advice to the company of his intention to terminate his employment within thirty (30) days from his last disembarkation date.
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> On August 9, 1989, petitioner Millares requested for an extension of his leave of absence from August 9 to 24, 1989. On August 19, 1989, Roy C. Palomar, Crewing Manager, Ship Group A, Trans-global, wrote petitioner Millares advising him that respondent Esso International "has corrected the deficiency in its manpower requirement specifically in the Chief Engineer rank by promoting a First Assistant Engineer to this position as a result of (his) previous leave of absence which expired last August 8, 1989. The adjustment in said rank was required in order to meet manpower schedules as a result of (his) inability."
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> On September 26, 1989, respondent Esso International, through H. Regenboog, Personnel Administrator, advised petitioner Millares that in view of his absence without leave, which is equivalent to abandonment of his position, he had been dropped from the roster of crew members effective September 1, 1989.
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> On the other hand, petitioner Lagda was employed by private respondent Esso International as wiper/oiler in June 1969. He was promoted as Chief Engineer in 1980, a position he continued to occupy until his last COE

expired on April 10, 1989. He was then receiving a monthly salary of US$1,939.00.

On May 16, 1989, petitioner Lagda applied for a leave of absence from June 19, 1989 up to the whole month of August 1989. On June 14, 1989, respondent Trans-Global's President, Michael J. Estaniel, approved petitioner Lagda's leave of absence from June 22, 1989 to July 20, 1989 and advised him to report for re-assignment on July 21, 1989.

On June 26, 1989, petitioner Lagda wrote a letter to G.S. Stanley, Operations Manager of respondent Esso International, through respondent Trans-Global's President Michael J. Estaniel, informing him of his intention to avail of the optional early retirement plan in view of his twenty (20) years continuous service in the complaint.

On July 13, 1989, respondent Trans-global denied petitioner Lagda's request for availment of the optional early retirement scheme on the same grounds upon which petitioner Millares request was denied.

On August 3, 1989, he requested for an extension of his leave of absence up to August 26, 1989 and the same was approved. However, on September 27, 1989, respondent Esso International, through H. Regenboog, Personnel Administrator, advised petitioner Lagda that in view of his "unavailability for contractual sea service," he had been dropped from the roster of crew members effective September 1, 1989.

On October 5, 1989, petitioners Millares and Lagda filed a complaint-affidavit, docketed as POEA (M) 89-10-9671, for illegal dismissal and non-payment of employee benefits against private respondents Esso International and Trans-Global, before the POEA.[5]

On July 17, 1991, the POEA rendered a decision dismissing the complaint for lack of merit.

On appeal to the NLRC, the decision of the POEA was affirmed on June 1, 1993 with the following disquisition:

> The first issue must be decided in the negative. Complainants-appellants, as seamen and overseas contract workers are not covered by the term "regular employment" as defined under Article 280 of the Labor Code. The POEA, which is tasked with protecting the rights of the Filipino workers for overseas employment to fair and equitable recruitment and employment practices and to ensure their welfare, prescribes a standard employment contract for seamen on board ocean-going vessels for a fixed period but in no case to exceed twelve (12) months (Part 1, Sec. C). This POEA policy appears to be in consonance with the international maritime practice. Moreover, the Supreme Court in *Brent School, Inc. vs. Zamora,* 181 SCRA 702, had held that a fixed term is essential and natural appurtenance of overseas employment contracts to which the concept of regular employment with all that it implies is not applicable, Article 280 of the Labor Code notwithstanding. There is, therefore, no reason to disturb the POEA Administrator's finding that complainants-appellants were hired on a contractual basis and for a definite period. Their employment is thus governed by the contracts they sign each time

they are re-hired and is terminated at the expiration of the contract period.[6]

Undaunted, the petitioners elevated their case to this Court[7] and successfully obtained the favorable action, which is now vehemently being assailed.

At the hearing on November 15, 2000, the Court defined the issues for resolution in this case, namely:

> I. ARE PETITIONERS REGULAR OR CONTRACTUAL EMPLOYEES WHOSE EMPLOYMENTS ARE TERMINATED EVERYTIME THEIR CONTRACTS OF EMPLOYMENT EXPIRE?
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> II. ASSUMING THAT PETITIONERS ARE REGULAR EMPLOYEES, WERE THEY DISMISSED WITHOUT JUST CAUSE SO AS TO BE ENTITLED TO REINSTATEMENT AND BACKWAGES, INCLUDING PAYMENT OF 100% OF THEIR TOTAL CREDITED CONTRIBUTIONS TO THE CONSECUTIVE ENLISTMENT INCENTIVE PLAN (CEIP)?
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> III. DOES THE PROVISION OF THE POEA STANDARD CONTRACT FOR SEAFARERS ON BOARD FOREIGN VESSELS (SEC. C., DURATION OF CONTRACT) PRECLUDE THE ATTAINMENT BY SEAMEN OF THE STATUS OF REGULAR EMPLOYEES?
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> IV. DOES THE DECISION OF THE COURT IN G.R. NO. 110524 CONTRAVENE INTERNATIONAL MARITIME LAW, ALLEGEDLY PART OF THE LAW OF THE LAND UNDER SECTION 2, ARTICLE II OF THE CONSTITUTION?
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> V. DOES THE SAME DECISION OF THE COURT CONSTITUTE A DEPARTURE FROM ITS RULING IN COYOCA VS. NLRC (G.R. NO. 113658, March 31, 1995)?[8]

In answer to the private respondents' Second Motion for Reconsideration and to FAME's Motion for Reconsideration in Intervention, petitioners maintain that they are regular employees as found by the Court in the March 14, 2000 Decision. Considering that petitioners performed activities which are usually necessary or desirable in the usual business or trade of private respondents, they should be considered as regular employees pursuant to Article 280, Par. 1 of the Labor Code. [9] Other justifications for this ruling include the fact that petitioners have rendered over twenty (20) years of service, as admitted by the private respondents;[10] that they were recipients of Merit Pay which is an express acknowledgment by the private respondents that petitioners are regular and not just contractual employees; [11] that petitioners were registered under the Social Security System (SSS).

The petitioners further state that the case of *Coyoca v. NLRC*[12] which the private respondents invoke is not applicable to the case at bar as the factual milieu in that case is not the same. Furthermore, private respondents' fear that our judicial pronouncement will spell the death of the manning industry is far from real. Instead, with the valuable contribution of the manning industry to our economy, these seafarers are supposed to be considered as "Heroes of the Republic" whose rights must be protected.[13] Finally, the first motion for reconsideration has already been

denied with finality by this Court and it is about time that the Court should write finis to this case.

The private respondents, on the other hand, contend that: (a) the ruling holding petitioners as regular employees was not in accord with the decision in *Coyoca v. NLRC,* 243 SCRA 190; (b) Art. 280 is not applicable as what applies is the POEA Rules and Regulations Governing Overseas Employment; (c) seafarers are not regular employees based on international maritime practice; (d) grave consequences would result on the future of seafarers and manning agencies if the ruling is not reconsidered; (e) there was no dismissal committed; (f) a dismissed seafarer is not entitled to back wages and reinstatement, that being not allowed under the POEA rules and the Migrant Workers Act; and, (g) petitioners are not entitled to claim the total amount credited to their account under the CEIP.[14]

Meanwhile, Intervenor Filipino Association of Mariners Employment (FAME) avers that our decision, if not reconsidered, will have negative consequences in the employment of Filipino Seafarers overseas which, in turn, might lead to the demise of the manning industry in the Philippines. As intervenor FAME puts it:

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> 7.1 Foreign principals will start looking for alternative sources for seafarers to man their ships. AS reported by the BIMCO/ISF study, "there is an expectancy that there will be an increasing demand for (and supply of) Chinese seafarers, with some commentators suggesting that this may be a long-term alternative to the Philippines." Moreover, "the political changes within the former Eastern Bloc have made new sources of supply available to the international market." Intervenor's recent survey among its members shows that 50 Philippine manning companies had already lost some 6,300 slots to other Asian, East Europe and Chinese competition for the last two years;
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> 7.2 The Philippine stands to lose an annual foreign income estimated at U.S. DOLLARS TWO HUNDRED SEVENTY FOUR MILLION FIVE HUNDRED FORTY NINE THOUSAND (US$ 274,549,000.00) from the manning industry and another US DOLLARS FOUR BILLION SIX HUNDRED FIFTY MILLION SEVEN HUNDRED SIX THOUSAND (US$ 4,650,760,000.00) from the land-based sector if seafarers and equally situated land-based contract workers will be declared regular employees;
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> 7.3 Some 195,917 (as of 1998) deployed overseas Filipino seafarers will be rendered jobless should we lose the market;
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> 7.4 Some 360 manning agencies (as of 30 June 2000) whose principals may no longer be doing business with them will close their shops;
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> 7.5 The contribution to the Overseas Worker's Welfare Administration by the sector, which is USD 25.00 per contract and translates to US DOLLARS FOUR MILLION (US$ 4,000,000.00)annually, will be drastically reduced. This is not to mention the processing fees paid to POEA, Philippine Regulatory Commission (PRC), Department of Foreign Affairs (DFA) and Maritime Industry Authority (MARINA) for the documentation of these seafarers;