408 Phil. 570

SECOND DIVISION

[G.R. No. 99047, April 16, 2001]

OMAR O. SEVILLANA, PETITIONER, VS. I.T.(INTERNATIONAL) CORP./SAMIR MADDAH & TRAVELLERS INSURANCE AND SURETY CORPORATION, DEPARTMENT OF LABOR AND EMPLOYMENT AND NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), RESPONDENTS.

D E C I S I O N

DE LEON, JR., J.:

This old petition, denominated as a petition for review on certiorari under Rule 45 of the Revised Rules of court, shall be treated as a special civil action for certiorari under Rule 65 for reasons which are hereinafter stated. The petition seeks to reverse the Resolution[1] dated March 26, 1991 of public respondent National Labor relations Commission (NLRC), Second Division, which set aside the Decision[2] dated December 29, 1989 of the Philippine Overseas Employment Administration Adjudication Office in POEA Case No. (L) 88-12-1048.

The facts are as follows:

Sometime in November 1987, petitioner Omar Sevillana was contracted to work as a driver by private respondent I.T. (International) Corporation (I.T., for brevity) for its foreign accredited principal, Samir Maddah (**Samir**, for brevity), in Jeddah, Saudi Arabia. The agreed monthly salary was US $370.00 for a period of two (2) years. Petitioner alleged, however, that when he received his salaries from his employer, he was only paid US $100.00 a month for twelve (12) months, instead of the agreed US $370.00 per month.

On November 2, 1988, after working twelve (12) months with his employer, petitioner said that he was repatriated without any valid and justifiable reason. Petitioner shouldered the cost of his return airfare in the amount of US $630.00.

Thereafter, petitioner filed a complaint with the Philippine Overseas Employment Administration (POEA, for brevity) for underpayment of salaries, illegal dismissal, reimbursement of return airfare, moral damages and attorney's fees against **I.T.** (International) Corporation, Samir Maddah and Travellers Insurance and Surety Corporation (**Travellers**, for brevity).

In answer thereto, private respondent **I.T.** denied the material allegations of the petitioner but admitted that the petitioner was one of several workers it deployed and employed abroad. **I.T.** argued that the petitioner continuously worked with **Samir** for more than one (1) year until his blood pressure was considered critical. Thus, **Samir** was forced to closely monitor the health condition of the petitioner. When petitioner's blood pressure did not stabilize and begun affecting his work as

driver due to frequent headaches and dizziness, **I.T.** alleged that **Samir** decided to repatriate the petitioner to avoid further injury and complication to his health. **I.T.** claimed that after the petitioner had received all the benefits accorded to an employee consisting of full salaries and separation pay, the petitioner refused to be repatriated and instead decided to run away. Since then, the whereabouts of the petitioner were unknown and **I.T.** only heard about the petitioner when the latter reported to their office in the Philippines and later on filed the subject complaint before the POEA Adjudication Office.

After both parties have submitted their respective position papers and their evidence thereto, the POEA Adjudication Office, through Tomas Achacoso, rendered a decision on December 29, 1989 holding the private respondents herein jointly and severally liable to the petitioner. The dispositive portion of the POEA decision reads -

> "WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents (International) Corporation, Madir and Travellers Insurance & Surety Corporation jointly and severally liable to the complainants the following amounts or their peso equivalents at the time of payment:
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> 1. THREE THOUSAND TWO HUNDRED FORTY US DOLLARS (US $3,240.00) representing complainant's salary differential for his twelve months employment;
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> 2. FOUR THOUSAND FOUR HUNDRED FORTY US DOLLARS (US $4,440.00) representing complainant's salaries for the unexpired portion of his employment contract;
>
> 3. TWO THOUSAND THREE HUNDRED SIXTY NINE SAUDI RIYAL (S.R. 2,369.00) representing the cost of complainant's return airfare;
>
> 4. 5% of the aforesaid amounts as attorney's fees.
>
> All other claims of the complainant are dismissed.
>
> SO ORDERED."[3]

Only private respondent **I.T.** appealed the aforesaid decision of the POEA Adjudication Office to the NLRC Second Division which in turn reversed and set aside the findings and ruling of the former in its Resolution dated March 26, 1991. The NLRC held that -

> "x x x x x x x x x
>
> The conclusions that could be inferred on the PAL Ticket is that complainant at that particular time travelled from Saudi Arabia to the Philippines - as to who paid the fare is subject of conflicting allegations; and the Travel Exit Pass, the same being a document of POEA; are proof of the contents thereof - the relevant fact in so far as this case is

concerned, is the agreed salary of complainant, $370.00 - not as to whether or not the complainant was underpaid. Thus, the primary evidence from which the Administrator drew his conclusions in the assailed decision is the affidavit of complainant where the affiant was not subjected to cross examination to determine whether or not he is telling the truth and the application (mis-application) of the general principles of law.

Consequently, we find it disconcerning to stamp Our imprimatur of approval in the assailed decision considering (the) quantum of evidence presented vis-a-vis (the) amount involved in the award.

Firstly, I.T. (Int'l) Corp. is a recruitment agency. It is not in the level of the employer itself. At the (sic) most it is an agent of the employer. The application, therefore, of the so called `common knowledge that in employer to employee relationship, the former is the one who keep records of payments,' and 'in a better position to present the same' in the present case is akin to stretching the said principle to ridiculous proportions. Both appellant and complainant-appellee stand an (sic) equal footing. No presumptions arises. They both do not have the employment records of the complainant. More serious inquiry should have been resorted to such as the instrument of cross examinating the witnesses presented by the parties, or even the use of clarificatory questions by the Office a quo to the witnesses would have shed light as to who among the parties is telling the truth. But records show that there is none.

Secondly, the POEA Administrator heavily relied upon the principle of law that in illegal termination cases, the burden of proof lies on the employer, and the employer not having presented sufficient evidence to justify the dismissal ergo the dismissal is illegal. The POEA Administrator misread the law. It is only when the employer admits the dismissal, which is not so in this case, that the burden to present proof that the dismissal is for cause hangs on the shoulders of the employer.

Thirdly, considering that the payment of the PAL ticket is at issue and there being no other evidence presented, except their respective bare self-serving and conflicting allegations We find no sufficient evidence to support a conclusion that one party paid for the ticket.

Basic in this jurisdiction is that he who asserts a right must prove it. In labor disputes, the evidence mandated by law are these relevant evidence which a reasonable and unbiased mind would accept to support a conclusion. Failing to do this, We find no basis to the award.

WHEREFORE, premises considered, the assailed decision is set aside and a new one entered dismissing this one.

SO ORDERED."[4]

Dissatisfied, petitioner now come to us and assigns the following as errors

committed by the NLRC, to wit:

I

THE PUBLIC RESPONDENT ERRED IN HOLDING THAT THE AFFIDAVIT OF COMPLAINT CANNOT BE THE BASIS OF TRUTH BECAUSE THE AFFIANT WAS NOT CROSS-EXAMINED.

II

THE PUBLIC RESPONDENT ERRED IN HOLDING THAT THE COMPLAINANT-PETITIONER WAS NOT ILLEGALLY DISMISSED.

III

THE PUBLIC RESPONDENT ERRED IN HOLDING THAT NEITHER PARTY, THE COMPLAINANT AND RESPONDENT, COULD BE AWARDED REIMBURSEMENT FOR THE PAL TICKET.

The Solicitor General, in his Comment[5] to the petition, joined the petitioner[6] in arguing that although there was a failure to allege grave abuse of discretion against the NLRC, this element of grave abuse of discretion is present in the instant petition. The assailed resolution was issued in gross violation of the settled principle that affidavits suffice as evidence in proceedings before quasi-judicial bodies like the POEA.[7] We find merit in the petition.

At the outset, we note that the instant petition was filed with this Court on May 22, 1991 before the ruling of this Court in the case of the *St. Martin Funeral Home vs. NLRC*[8] on September 16, 1998 which required that judicial review of labor cases should be filed in the Court of Appeals before the same can be elevated to this Court following the doctrine on hierarchy of courts. The prevailing jurisprudence then holds that judicial review of labor cases by the Supreme Court may only be through a petition for certiorari under Rule 65 of the Rules of Court.[9] Moreover, in the interest of justice, this Court had treated, in a number of cases, as special civil actions for certiorari petitions erroneously captioned as petitions for review on certiorari.[10] It is in this light that we so treat the present petition. Rules of procedure and evidence should not be applied in a very rigid and technical sense in labor cases in order that technicalities would not stand in the way of equitably and completely resolving the rights and obligations of the parties.[11] Furthermore, while we consider this petition as one for certiorari under Rule 65 of the Rules of Court, it is likewise significant to note that petitioner failed to seasonably file a motion for reconsideration at the NLRC level before recourse to this Court was made. As a general rule, this petition should have been dismissed outright for failure to comply with a condition precedent in order that this petition for certiorari shall lie. The filing of a motion for reconsideration before resort to certiorari will lie is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case.[12] However, this rule is subject to certain recognized exceptions.[13] Upon careful consideration of the case at bar, we find that this case falls under one of

those recognized exceptions, namely, that the assailed order is a patent nullity, as will be shown later.

Anent the first issue, petitioner contends that public respondent NLRC acted with grave abuse of discretion when it considered petitioner's complaint-affidavit as mere hearsay evidence since the petitioner was not cross-examined. Petitioner argues that private respondent **I.T.** waived its right to cross-examine him when both parties agreed to submit their case for decision before the POEA Adjudication Officer on the basis of each parties' respective position papers, affidavits and other evidence extant on the record below.

Petitioner's argument is well-taken. It must be stressed that labor laws mandate the speedy disposition of cases, with the least attention to technicalities but without sacrificing the fundamental requisites of due process. In this light, the NLRC, like the labor arbiter, (in the case at bar, the POEA Adjudication Officer) is authorized to decide cases based on the position papers and other documents submitted, without resorting to technical rules of evidence.[14] We quote, with approval, the following observations of the Solicitor General:

> "We are constrained to disagree with the ruling of the NLRC.
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> In the recently decided case of Rabago et. al. vs. NLRC and Philippine Tuberculosis Society, Inc., G.R. No. 82868, August 5, 1991, pp. 8-9, this Honorable Court held:
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> 'We have said often enough that the findings of fact of quasi-judicial agencies which have acquired expertise on the specific matters entrusted to their jurisdiction are accorded by this Court not only respect but finality if they are supported by substantial evidence (Omar K. Al-Esayi and Company, Ltd. Vs. Flores, 183 SCRA 458; Chua vs. NLRC, 182 SCRA 353; Pagkakaisa ng mga Manggagawa vs. Ferrer-Calleja, 181 SCRA 119).'
>
> `x x x The argument that the affidavit is hearsay because the affiants were not presented for cross-examination is not persuasive because the rules of evidence are not strictly observed in proceedings before administrative bodies like the NLRC, where decisions may be reached on the basis of position papers only. It is also worth noting that ABC has not presented any evidence of its own to disprove the complainant's claim. As the Solicitor General correctly points out, it would have been so easy to submit the complainant's employment records which were in the custody of ABC, to show that they had served (for) less than one year.' (underscoring for emphasis)

Thus, it is clear that petitioner's affidavit of complaint may be made the basis of truth even if affiant was not cross-examined."[15] The fact alone that most of the documents submitted in evidence by an employee were prepared by him does not make them self-serving *since they have been offered in the proceedings before the Labor Arbiter (in this case before the POEA Adjudication Officer) and that ample opportunity was given to the employer to rebut their veracity and authenticity*[16].