

## FIRST DIVISION

[ G.R. No. 100388, December 14, 2000 ]

### **SOCIAL SECURITY SYSTEM, *PETITIONER*, VS. THE COURT OF APPEALS AND CONCHITA AYALDE, *RESPONDENTS*.**

#### **D E C I S I O N**

##### **YNARES-SANTIAGO, J.:**

In a petition before the Social Security Commission, Margarita Tana, widow of the late Ignacio Tana, Sr., alleged that her husband was, before his demise, an employee of Conchita Ayalde as a farmhand in the two (2) sugarcane plantations she owned (known as Hda. No. Audit B-70 located in Pontevedra, La Carlota City) and leased from the University of the Philippines (known as Hda. Audit B-15-M situated in La Granja, La Carlota City). She further alleged that Tana worked continuously six (6) days a week, four (4) weeks a month, and for twelve (12) months every year between January 1961 to April 1979. For his labor, Tana allegedly received a regular salary according to the minimum wage prevailing at the time. She further alleged that throughout the given period, social security contributions, as well as medicare and employees compensation premiums were deducted from Tana's wages. It was only after his death that Margarita discovered that Tana was never reported for coverage, nor were his contributions/premiums remitted to the Social Security System (SSS). Consequently, she was deprived of the burial grant and pension benefits accruing to the heirs of Tana had he been reported for coverage.

Hence, she prayed that the Commission issue an order directing:

1. respondents Conchita Ayalde and Antero Maghari as her administrator to pay the premium contributions of the deceased Ignacio Tana, Sr. and report his name for SSS coverage; and
2. the SSS to grant petitioner Margarita Tana the funeral and pension benefits due her.<sup>[1]</sup>

The SSS, in a petition-in-intervention, revealed that neither Hda. B-70 nor respondents Ayalde and Maghari were registered members-employers of the SSS, and consequently, Ignacio Tana, Sr. was never registered as a member-employee. Likewise, SSS records reflected that there was no way of verifying whether the alleged premium contributions were remitted since the respondents were not registered members-employers. Being the agency charged with the implementation and enforcement of the provisions of the Social Security Law, as amended, the SSS asked the Commission's leave to intervene in the case.<sup>[2]</sup>

In his answer, respondent Antero Maghari raised the defense that he was a mere employee who was hired as an overseer of Hda. B-70 sometime during crop years 1964-65 to 1971-72, and as such, his job was limited to those defined for him by the employer which never involved matters relating to the SSS. Hence, he prayed that the case against him be dismissed for lack of cause of action.<sup>[3]</sup>

For her part, respondent Ayalde belied the allegation that Ignacio Tana, Sr. was her employee, admitting only that he was hired intermittently as an independent contractor to plow, harrow, or burrow Hda. No. Audit B-15-M. Tana used his own carabao and other implements, and he followed his own schedule of work hours. Ayalde further alleged that she never exercised control over the manner by which Tana performed his work as an independent contractor. Moreover, Ayalde averred that way back in 1971, the University of the Philippines had already terminated the lease over Hda. B-15-M and she had since surrendered possession thereof to the University of the Philippines. Consequently, Ignacio Tana, Sr. was no longer hired to work thereon starting in crop year 1971-72, while he was never contracted to work in Hda. No. Audit B-70. She also prayed for the dismissal of the case considering that Ignacio Tana, Sr. was never her employee.<sup>[4]</sup>

After hearing both parties, the Social Security Commission issued a Resolution on January 28, 1988, the dispositive portion of which reads:

After a careful evaluation of the testimonies of the petitioner and her witnesses, as well as the testimony of the respondent together with her documentary evidences, this Commission finds that the late Ignacio Tana was employed by respondent Conchita Ayalde from January 1961 to March 1979. The testimony of the petitioner which was corroborated by Agaton Libawas and Aurelio Tana, co-workers of the deceased Ignacio Tana, sufficiently established the latter's employment with the respondent.

As regards respondent Antero Maghari, he is absolved from liability because he is a mere employee of Conchita Ayalde.

PREMISES CONSIDERED, this Commission finds and so holds that the late Ignacio Tana had been employed continuously from January 1961 to March 1979 in Hda. B-70 and Hda. B-15-M which are owned and leased, respectively, by respondent Conchita (Concepcion) Ayalde with a salary based on the Minimum Wage prevailing during his employment.

Not having reported the petitioner's husband for coverage with the SSS, respondent Conchita (Concepcion) Ayalde is, therefore, liable for the payment of damages equivalent to the death benefits in the amount of P7,067.40 plus the amount of P750.00 representing funeral benefit or a total of P7,817.40.

Further, the SSS is ordered to pay to the petitioner her accrued pension covering the period after the 5-year guaranteed period corresponding to the employer's liability.

SO ORDERED."<sup>[5]</sup>

Respondent Ayalde filed a motion for reconsideration<sup>[6]</sup> which the Commission denied for lack of merit in an Order dated November 3, 1988.<sup>[7]</sup>

Not satisfied with the Commission's ruling, Ayalde appealed to the Court of Appeals, docketed as CA-G.R. SP No. 16427, raising the following assignment of errors:

## I

The Social Security Commission erred in not finding that there is sufficient evidence to show that:

(a) The deceased Ignacio Tana, Sr. never worked in the farmland of respondent-appellant situated in Pontevedra, La Carlota City, otherwise known as Hacienda No. Audit B-70, (Pontevedra B-70 Farm for short), in any capacity, whether as a daily or monthly laborer or as independent contractor;

(b) During the time that respondent-appellant was leasing a portion of the land of the University of the Philippines, otherwise known as Hacienda Audit No. B-15-M, (La Granja B-15 Farm for short), the deceased Ignacio Tana, Sr. was hired thereat on a 'pakyaw' basis, or as an independent contractor, performing the services of an 'arador' (Plower), for which he was proficient, using his own carabao and farming implements on his own time and discretion within the period demanded by the nature of the job contracted.

## II

The Social Security Commission erred in holding that there is no evidence whatsoever to show that respondent-appellant was no longer leasing La Granja B-15 Farm.

## III

The Social Security Commission erred in not holding that the deceased Ignacio Tana, having been hired as an independent contractor on 'pakyaw' basis, did not fall within the coverage of the Social Security Law.<sup>[8]</sup>

The Court of Appeals rendered judgment in favor of respondent-appellant Conchita Ayalde and dismissed the claim of petitioner Margarita Tan.

The SSS, as intervenor-appellee, filed a Motion for Reconsideration, which was denied on the ground that the arguments advanced are "mere reiterations of issues and arguments already considered and passed upon in the decision in question which are utterly insufficient to justify a modification or reversal of said decision."<sup>[9]</sup>

Hence, this petition for review on *certiorari* on the following assigned errors:

- 1) The Court of Appeals was in error in ruling that an employee working under the "*pakyaw*" system is considered under the law to be an independent contractor.
- 2) The Court of Appeals was in error in not giving due consideration to the fundamental tenet that doubts in the interpretation and implementation of labor and social welfare laws should be resolved in favor of labor.
- 3) The Court of Appeals was in error in disregarding the settled rule that the factual findings of administrative bodies on matters within their competence shall not be disturbed by the courts.
- 4) The Court of Appeals was in error in ruling that even granting *arguendo* that Ignacio Tana was employed by Conchita Ayalde, such employment did not entitle him to compulsory coverage since he was not paid any regular daily wage or basic pay and he did not work for an uninterrupted period of at least six months in a year in accordance with Section 8(j) (1) of the SS Law.

The pivotal issue to be resolved in this petition is whether or not an agricultural laborer who was hired on "*pakyaw*" basis can be considered an employee entitled to compulsory coverage and corresponding benefits under the Social Security Law.

Petitioner, Social Security System (or SSS), argues that the deceased Ignacio Tana, Sr., who was hired by Conchita Ayalde on "*pakyaw*" basis to perform specific tasks in her sugarcane plantations, should be considered an employee; and as such, his heirs are entitled to pension and burial benefits.

The Court of Appeals, however, ruled otherwise, reversing the ruling of the Social Security Commission and declaring that the late Ignacio Tana, Sr. was an independent contractor, and in the absence of an employer-employee relationship between Tana and Ayalde, the latter cannot be compelled to pay to his heirs the burial and pension benefits under the SS Law.

At the outset, we reiterate the well-settled doctrine that the existence of an employer-employee relationship is ultimately a question of fact.<sup>[10]</sup> And while it is the general rule that factual issues are not within the province of the Supreme Court, said rule is not without exception. In cases, such as this one, where there are conflicting and contradictory findings of fact, this Court has not hesitated to scrutinize the records to determine the facts for itself.<sup>[11]</sup> Our disquisition of the facts shall be our guide as to whose findings are supported by substantial evidence.

The mandatory coverage under the SSS Law (Republic Act No. 1161, as amended by PD 1202 and PD 1636) is premised on the existence of an employer-employee relationship, and Section 8(d) defines an "employee" as "any person who performs services for an employer in which either or both mental and physical efforts are

used and who receives compensation for such services where there is an employer-employee relationship." The essential elements of an employer-employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power of control with regard to the means and methods by which the work is to be accomplished, with the power of control being the most determinative factor.<sup>[12]</sup>

There is no question that Tana was selected and his services engaged by either Ayalde herself, or by Antero Maghari, her overseer. Corollarily, they also held the prerogative of dismissing or terminating Tana's employment. The dispute is in the question of payment of wages. Claimant Margarita Tana and her corroborating witnesses testified that her husband was paid daily wages "*per quincena*" as well as on "*pakyaw*" basis. Ayalde, on the other hand, insists that Tana was paid solely on "*pakyaw*" basis. To support her claim, she presented payrolls covering the period January of 1974 to January of 1976;<sup>[13]</sup> and November of 1978 to May of 1979.<sup>[14]</sup>

A careful perusal of the records readily show that the exhibits offered are not complete, and are but a mere sampling of payrolls. While the names of the supposed laborers appear therein, their signatures are nowhere to be found. And while they cover the years 1975, 1976 and portions of 1978 and 1979, they do not cover the 18-year period during which Tana was supposed to have worked in Ayalde's plantations. Also an admitted fact is that these exhibits only cover Hda. B70, Ayalde having averred that all her records and payrolls for the other plantation (Hda. B-15-M) were either destroyed or lost.<sup>[15]</sup>

To our mind, these documents are not only sadly lacking, they are also unworthy of credence. The fact that Tana's name does not appear in the payrolls for the years 1975, 1976 and part of 1978 and 1979, is no proof that he did not work in Hda. B70 in the years 1961 to 1974, and the rest of 1978 and 1979. The veracity of the alleged documents as payrolls are doubtful considering that the laborers named therein never affixed their signatures to show that they actually received the amounts indicated corresponding to their names. Moreover, no record was shown pertaining to Hda. B-15-M, where Tana was supposed to have worked. Even Ayalde admitted that she hired Tana as "*arador*" and sometimes as laborer during milling in Hda. B-15-M.<sup>[16]</sup> In light of her incomplete documentary evidence, Ayalde's denial that Tana was her employee in Hda. B-70 or Hda. B-15-M must fail.

In contrast to Ayalde's evidence, or lack thereof, is Margarita Tana's positive testimony, corroborated by two (2) other witnesses. On the matter of wages, they testified as follows:

Margarita Tana:

Q. During the employment of your late husband, was he paid any wages?

A. Yes, he was paid.

Q. What was the manner of payment of his salary, was it on "*pakyaw*" or daily basis?

A. Daily basis.

Q. How many times did he receive his salary in a month's time?

A. 2 times.