

## THIRD DIVISION

[ G.R. No. 128682, March 18, 1999 ]

**JOAQUIN T. SERVIDAD, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, INNODATA PHILIPPINES, INC./ INNODATA CORPORATION, TODD SOLOMON, RESPONDENTS.**

### DECISION

**PURISIMA, J.:**

***Commodum ex injuria sua nemo habere debet.*** No one should obtain an advantage from his own wrong. Schemes which preclude acquisition of tenurial security should be condemned as contrary to public policy. No member of the work force of this country should be allowed to be taken advantage of by the employer.<sup>[1]</sup>

In this special civil action for *Certiorari* petitioner seeks to annul the decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC) reversing the Labor Arbiter's disposition<sup>[3]</sup> that he was illegally dismissed.

The facts of the case are as follows:

Petitioner Joaquin T. Servidad was employed on May 9, 1994 by respondent INNODATA as a "Data Control Clerk", under a contract of employment Section 2 of which, reads:

"Section 2. This Contract shall be effective for a period of 1 years commencing on May 10, 1994, until May 10, 1995 unless sooner terminated pursuant to the provisions hereof.

*From May 10, 1994 to November 10, 1994, or for a period of six (6) months, the EMPLOYEE shall be contractual during which the EMPLOYER can terminate the EMPLOYEE's services by serving written notice to that effect. Such termination shall be immediate, or at whatever date within the six-month period, as the EMPLOYER may determine. Should the EMPLOYEE continue his employment beyond November 10, 1994, he shall become a regular employee upon demonstration of sufficient skill in the terms of his ability to meet the standards set by the EMPLOYER. If the EMPLOYEE fails to demonstrate the ability to master his task during the first six months he can be placed on probation for another six (6) months after which he will be evaluated for promotion as a regular employee."*<sup>[4]</sup>

On November 9, 1995, or after working for six (6) months, he was made to sign a three-month probationary employment and later, an extended three-month probationary employment good until May 9, 1995.<sup>[5]</sup>

On July 7, 1994, the petitioner was given an overall rating of 100% and 98% in the work evaluations conducted by the company. In another evaluation, petitioner received a rating of 98.5% given by the private respondent.<sup>[6]</sup>

On May 9, 1995, petitioner was dismissed from the service on the ground of alleged termination of contract of employment.

Such happening prompted petitioner to institute a case for illegal dismissal against the private respondent. In ruling for petitioner, the Labor Arbiter disposed as follows:

*"WHEREFORE, premises considered judgment is hereby rendered finding Respondent guilty of illegal dismissal and concomitantly, Respondent is ordered to pay complainant full backwages from the time of his dismissal till actual or payroll reinstatement, in the amount of P53,826.50 (computed till promulgation only).*

*Respondent is hereby further ordered to reinstate complainant to his former position or equivalent position without loss of seniority rights, privileges and benefits as a regular employee immediately upon receipt of this decision.*

*SO ORDERED.*"<sup>[7]</sup>

On appeal thereto by INNODATA, the NLRC reversed the aforesaid judgment of the Labor Arbiter. It declared that the contract between petitioner and private respondent was for a fixed term and therefore, the dismissal of petitioner Joaquin T. Servidad, at the end of his one year term agreed upon, was valid. The decretal portion of the decision of NLRC is to the following effect:

*"All said the judgment dated August 20, 1996 is hereby, REVERSED.*

*WHEREFORE, premises considered, the instant case is hereby DISMISSED for lack of merit.*

*SO ORDERED.*"<sup>[8]</sup>

Undaunted, petitioner found his way to this Court via the present faulting NLRC for acting with grave abuse of discretion in adjudging subject contract of employment of petitioner to be for a definite or fixed period.

The petition is impressed with merit.

At bar is just another scheme to defeat the constitutionally guaranteed right of employees to security of tenure. The issue posited centers on the validity and enforceability of the contract of employment entered into by the parties.

The NLRC found that the contract in question is for a fixed term. It is worthy to note, however, that the said contract provides for two periods. The first period was for six months terminable at the option of private respondent, while the second period was also for six months but probationary in character. In both cases, the private respondent did not specify the criteria for the termination or retention of the

services of petitioner. Such a wide leeway for the determination of the tenure of an employee during a one year period of employment is violative of the right of the employee against unwarranted dismissal.

Decisively in point is Article 1377 of the Civil Code, which provides:

*"Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity."*

Certainly, favorable interpretation of the contract in the case under scrutiny should be for petitioner and not for the private respondent which caused the preparation of said contract.

If the contract was really for a fixed term, the private respondent should not have been given the discretion to dismiss the petitioner during the one year period of employment for reasons other than the just and authorized causes under the Labor Code. Settled is the rule that an employer can terminate the services of an employee only for valid and just causes which must be shown by clear and convincing evidence.<sup>[9]</sup>

According to the private respondent, the one-year period stipulated in subject contract was to enable petitioner to acquire the skill necessary for the job. In effect, what respondent employer theorized upon is that the one-year term of employment is probationary. If the nature of the job did actually necessitate at least one year for the employee to acquire the requisite training and experience, still, the same could not be a valid probationary employment as it falls short of the requirement of Article 281<sup>[10]</sup> of the Labor Code. It was not brought to light that the petitioner was duly informed at the start of his employment, of the reasonable standards under which he could qualify as a regular employee. The rudiments of due process demand that an employee should be apprised before hand of the conditions of his employment and the basis for his advancement.<sup>[11]</sup>

The language of the contract in dispute is truly a double-bladed scheme to block the acquisition of the employee of tenurial security. Thereunder, private respondent has two options. It can terminate the employee by reason of expiration of contract, or it may use "failure to meet work standards" as the ground for the employee's dismissal. In either case, the tenor of the contract jeopardizes the right of the worker to security of tenure guaranteed by the Constitution.<sup>[12]</sup>

In the case of *Brent School, Inc. vs. Zamora, et al.*<sup>[13]</sup>, the Court upheld the principle that where from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be disregarded for being contrary to public policy.

Such circumstance has been indubitably shown here to justify the application of the following conclusion:

*"Accordingly, and since the entire purpose behind the development of the legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written*

*or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. x x x*"<sup>[14]</sup>

The agreement in the case under consideration has such an objective and consequently, is a complete nullity.<sup>[15]</sup>

It is abundantly clear that the petitioner was hired as a regular employee, at the outset. He worked as a "Data Control Clerk". His job was directly related to the data processing and data encoding business of Innodata. His work was therefore necessary and important to the business of his employer. Such being the scenario involved under Article 280<sup>[16]</sup> of the Labor Code petitioner is considered a regular employee of private respondent. At any rate, even assuming that his original employment was probationary, petitioner was anyway permitted to work beyond the first six-month period and under Article 281<sup>[17]</sup> an employee allowed to work beyond the probationary period is deemed a regular employee.

Reliance by NLRC on the ruling in *Mariwasa Manufacturing, Inc., et al. vs. Hon. V. Leogardo Jr., et al.*<sup>[18]</sup> is misplaced. Pertinent portion of the disquisition therein was as follows:

*"By voluntary agreeing to an extension of the probationary period, Dequila in effect waived any benefit attaching to the completion of said period if he still failed to make the grade during the period of extension. The Court finds nothing in the law which by any fair interpretation prohibits such waiver. And no public policy protecting the employee and the security of tenure is served by proscribing voluntary agreements which, by reasonably extending the period of probation, actually improve and further a probationary employee's prospects of demonstrating his fitness for regular employment."*<sup>[19]</sup>

The above-described situation, however, is not the same as what obtained in this case. In the Mariwasa case, the employment was expressly agreed upon as probationary. Here, no such specific designation is stipulated in the contract. The private respondent sought to alternatively avail of probationary employment and employment for a fixed term so as to preclude the regularization of the status of petitioner. The utter disregard of public policy by the contract in question negates the ruling of NLRC that said contract is the law between the parties. The private agreement of the parties cannot prevail over Article 1700 of the Civil Code, which provides:

*"Art. 1700. The relation between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to special laws on labor unions, collective bargaining, strikes and lockouts, closed shops, wages, working conditions, hours of labor and similar subjects."*

Similarly telling is the case of *Pakistan Airlines Corporation vs. Pole, et al.*<sup>[20]</sup> There, it was said: