366 Phil. 581

SECOND DIVISION

[G.R. No. 120466, May 17, 1999]

COCA COLA BOTTLERS PHILS., INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND RAMON B. CANONICATO, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

This petition for *certiorari* under Rule 65 of the Revised Rules of Court assails the 3 January 1995 decision[1] of the National Labor Relations Commission (NLRC) holding that private respondent Ramon B. Canonicato is a regular employee of petitioner Coca Cola Bottlers Phils. Inc. (COCA COLA) entitled to reinstatement and back wages. The NLRC reversed the decision of the Labor Arbiter of 28 April 1994[2] which declared that no employer-employee relationship existed between COCA COLA and Canonicato thereby foreclosing entitlement to reinstatement and back wages.

On 7 April 1986 COCA COLA entered into a contract of janitorial services with Bacolod Janitorial Services (BJS) stipulating[3] among others -

> That the First Party (COCA COLA) desires to engage the services of the Second Party (BJS), as an Independent Contractor, to perform and provide for the maintenance, sanitation and cleaning services for the areas hereinbelow mentioned, all located within the aforesaid building of the First Party x x x x
>
> 1. *The scope of work of the Second Party includes all floors, walls, doors, vertical and horizontal areas, ceiling, all windows, glass surfaces, partitions, furniture, fixtures and other interiors within the aforestated covered areas.*
>
> 2. Except holidays which are rest days, the Second Party will undertake daily the following: 1) Sweeping, damp-mopping, spot scrubbing and polishing of floors; 2) Cleaning, sanitizing and disinfecting agents to be used on commodes, urinals and washbasins, water spots on chrome and other fixtures to be checked; 3) Cleaning of glass surfaces, windows and glass partitions that require daily attention; 4) Cleaning and dusting of horizontal and vertical surfaces; 5) Cleaning of fixtures, counters, panels and sills; 6) Clean, pick-up cigarette butts from sandburns and ashtrays and trash receptacles; 7) Trash and rubbish disposal and burning.
>
> In addition, the Second Party will also do the following once a week, to wit: 1) Cleaning, waxing and polishing of lobbies and offices; 2)

Washing of windows, glasses that require cleaning; 3) Thorough disinfecting and cleaning of toilets and washrooms.

3. *The Second Party shall supply the necessary utensils, equipment and supervision, and it shall only employ the services of fifteen (15) honest, reliable, carefully screened, cooperative and trained personnel, who are in good faith, in the performance of its herein undertaking x x x x*

4. The Second Party hereby guarantees against unsatisfactory workmanship. Minor repair of comfort rooms are free of charge provided the First Party will supply the necessary materials for such repairs at its expense. *As may be necessary, the Second Party shall also report on such part or areas of the premises covered by this contract which may require repairs from time to time* x x x (italics supplied).

Every year thereafter a service contract was entered into between the parties under similar terms and conditions until about May 1994.[4]

On 26 October 1989 COCA COLA hired private respondent Ramon Canonicato as a casual employee and assigned him to the bottling crew as a substitute for absent employees. In April 1990 COCA COLA terminated Canonicato's casual employment. Later that year COCA COLA availed of Canonicato's services, this time as a painter in contractual projects which lasted from fifteen (15) to thirty (30) days.[5]

On 1 April 1991 Canonicato was hired as a janitor by BJS[6] which assigned him to COCA COLA considering his familiarity with its premises. On 5 and 7 March 1992 Canonicato started painting the facilities of COCA COLA and continued doing so several months thereafter or so for a few days every time until 6 to 25 June 1993. [7]

Goaded by information that COCA COLA employed previous BJS employees who filed a complaint against the company for regularization pursuant to a compromise agreement,[8] Canonicato submitted a similar complaint against COCA COLA to the Labor Arbiter on 8 June 1993.[9] The complaint was docketed as RAB Case No. 06-06-10337-93.

Without notifying BJS, Canonicato no longer reported to his COCA COLA assignment starting 29 June 1993. On 15 July 1993 he sent his sister Rowena to collect his salary from BJS.[10] BJS released his salary but advised Rowena to tell Canonicato to report for work. Claiming that he was barred from entering the premises of COCA COLA on either 14 or 15 July 1993, Canonicato met with the proprietress of BJS, Gloria Lacson, who offered him assignments in other firms which he however refused.[11]

On 23 July 1993 Canonicato amended his complaint against COCA COLA by citing instead as grounds therefor illegal dismissal and underpayment of wages. He included BJS therein as a co-respondent.[12] On 28 September 1993 BJS sent him a letter advising him to report for work within three (3) days from receipt, otherwise,

he would be considered to have abandoned his job.[13]

On 28 April 1994 the Labor Arbiter ruled that: (a) there was no employer-employee relationship between COCA COLA and Ramon Canonicato because BJS was Canonicato's real employer; (b) BJS was a legitimate job contractor, hence, any liability of COCA COLA as to Canonicato's salary or wage differentials was solidary with BJS in accordance with pars. 1 and 2 of Art. 106, Labor Code; (c) COCA COLA and BJS must jointly and severally pay Canonicato his wage differentials amounting to P2,776.80 and his 13th month salary of P1,068.00, including ten (10%) percent attorney's fees in the sum of P384.48. The Labor Arbiter also ordered that all other claims by Canonicato against COCA COLA be dismissed for lack of employer-employee relationship; that the complaint for illegal dismissal as well as all the other claims be likewise dismissed for lack of merit; and that COCA COLA and BJS deposit P4,429.28 with the Department of Labor Regional Arbitration Branch Office within ten (10) days from receipt of the decision.[14]

The NLRC rejected on appeal the decision of the Labor Arbiter on the ground that the janitorial services of Canonicato were found to be necessary or desirable in the usual business or trade of COCA COLA. The NLRC accepted Canonicato's proposition that his work with the BJS was the same as what he did while still a casual employee of COCA COLA. In so holding the NLRC applied Art. 280 of the Labor Code and declared that Canonicato was a regular employee of COCA COLA and entitled to reinstatement and payment of P18,105.10 in back wages.[15]

On 26 May 1995 the NLRC denied COCA COLA's motion for reconsideration for lack of merit.[16] Hence, this petition, assigning as errors: (a) NLRC's finding that janitorial services were necessary and desirable in COCA COLA's trade and business; (b) NLRC's application of Art. 280 of the Labor Code in resolving the issue of whether an employment relationship existed between the parties; (c) NLRC's ruling that there was an employer-employee relationship between petitioner and Canonicato despite its virtual affirmance that BJS was a legitimate job contractor; (d) NLRC's declaration that Canonicato was a regular employee of petitioner although he had rendered the company only five (5) months of casual employment; and, (e) NLRC's order directing the reinstatement of Canonicato and the payment to him of six (6) months back wages.[17]

We find good cause to sustain petitioner. Findings of fact of administrative offices are generally accorded respect by us and no longer reviewed for the reason that such factual findings are considered to be within their field of expertise. Exception however is made, as in this case, when the NLRC and the Labor Arbiter made contradictory findings.

We perceive at the outset the disposition of the NLRC that janitorial services are necessary and desirable to the trade or business of petitioner COCA COLA. But this is inconsistent with our pronouncement in *Kimberly Independent Labor Union v. Drilon*[18] where the Court took judicial notice of the practice adopted in several government and private institutions and industries of hiring janitorial services on an "independent contractor basis." In this respect, although janitorial services may be considered directly related to the principal business of an employer, as with every business, we deemed them unnecessary in the conduct of the employer's principal