369 Phil. 929

FIRST DIVISION

[G.R. No. 122122, July 20, 1999]

PHILIPPINE FRUIT & VEGETABLE INDUSTRIES, INC. AND ITS PRESIDENT AND GENERAL MANAGER, MR. PEDRO CASTILLO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, AND PHILIPPINE FRUIT AND VEGETABLE WORKERS UNION-TUPAS LOCAL CHAPTER, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

In this special civil action for *certiorari*, petitioners assail the Decision dated May 31, 1995 of public respondent National Labor Relations Commission (NLRC) which upheld with modification the decision of Labor Arbiter Quintin C. Mendoza finding that the members of respondent union were illegally dismissed and granting them, among others, their backwages and separation pay if their reinstatement is no longer feasible; and the Resolution dated August 22, 1995 of the same public respondent, which denied petitioners' motion for reconsideration of the above decision.

Petitioner Philippine Fruit and Vegetable Industries, Inc. (PFVII, for brevity) is a government-owned and controlled corporation engaged in the manufacture and processing of fruit and vegetable purees for export. Petitioner Pedro Castillo is the former President and General Manager of petitioner PFVII.

On September 5, 1988 herein private respondent Philippine Fruit and Vegetable Workers Union-Tupas Local Chapter, for and in behalf of 127 of its members, filed a complaint for unfair labor practice and/or illegal dismissal with damages against petitioner corporation. Private respondent alleged that many of its complaining members started working for San Carlos Fruits Corporation which later incorporated into PFVII in January or February 1983 until their dismissal on different dates in 1985, 1986, 1987 and 1988. They further alleged that the dismissals were due to complainants' involvement in union activities and were without just cause.

On September 23, 1988, herein petitioners filed a motion to dismiss.

On October 13, 1988, respondent union filed its position paper wherein it added as complainants 33 more of its members, raising the number of complainants to 160.

On November 21, 1988, respondent union filed a supplemental position paper alleging that there were actually 194 complainants. Respondent union attached thereto a list of their names and the amounts of their claims.

On December 26, 1988, Labor Arbiter Ricardo Olairez rendered a decision holding petitioners liable for illegal dismissal.

On appeal, the third division of the NLRC, in its Resolution dated May 31, 1990, set aside the appealed decision and remanded the case to the Arbitration Branch for further proceedings.

In the Arbitration Branch, Labor Arbiter Melquiades Sol D. del Rosario, and subsequently, Labor Arbiter Quintin C. Mendoza, received the evidence presented by both parties.

On July 28, 1992, Labor Arbiter Mendoza rendered a decision finding petitioners liable for, among others, illegal dismissal. The dispositive portion of the decision reads:

> WHEREFORE, decision is hereby issued ordering the respondent Philippine Fruits and Vegetable, Industries Corporation and or its President/General Manager Pedro Castillo to pay the aforementioned 190 complainants their full backwages and 13th month pay in the aforestated amounts, aggregating six million one hundred forty two thousand fifty-one pesos and 37/100 centavos, (P6,142,051.37), plus separation pay of one-half month pay for every year of service including 1991, at the option of respondent, if reinstatement is no longer feasible.
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> Likewise, attorney's fee representing ten percent (10%) of the total award is hereby granted, the same to be shared proportionately between complainant's former counsel ALAR, COMIA, MANALO and ASSOCIATES LAW OFFICES, c/o Atty. Benjamin Alar, and counsel of record Atty. Alejandro Villamil, the former having established its right and lien over the award.
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> SO ORDERED.[1]

On appeal, respondent NLRC affirmed the decision of the Labor Arbiter "with. modification that the award of attorneys fees shall be based only on the amounts corresponding to 13th month pay."[2]

Petitioners filed a motion for reconsideration which was denied by respondent NLRC in a Resolution dated August 22, 1995.[3]

Hence, this petition wherein petitioners raise the following issues:

> I
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> THE QUESTIONED DECISION IS NOT SUPPORTED BY EVIDENCE, APPLICABLE LAWS AND JURISPRUDENCE.
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> II
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> PRIVATE RESPONDENTS ARE SEASONAL EMPLOYEES WHOSE EMPLOYMENTS CEASED DURING THE OFF-SEASON DUE TO NO WORK AND NOT DUE TO ILLEGAL DISMISSAL.
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> III

THE LABOR ARBITER AND THE NLRC COMMITTED MANIFEST ERROR IN ORDERING PETITIONER TO PAY 194 INDIVIDUALS BACKWAGES, 13th MONTH PAY AND SEPARATION PAY BENEFITS.[4]

Petitioners contend that the NLRC's findings of fact are incorrect and unsubstantiated. They allege that the aforementioned San Carlos Fruits Corporation is separate and distinct from herein petitioner PFVII; hence, it was arbitrary on the part of public respondent to hold petitioners liable to the employees of San Carlos Fruits Corporation.

Petitioners further argue that PFVII operates on a seasonal basis and the complainants who are members of respondent union are seasonal workers because they work only during the period that the company is in operation. According to petitioners, its operation starts only in February with the processing of tomatoes into tomato paste and ceases by the end of the same month when the supply is consumed. It then resumes operations at the end of April or early May, depending on the availability of supply with the processing of mangoes into purees and ceases operation in June.[5] The severance of complainants' employment from petitioner corporation was a necessary consequence of the nature of seasonal employment; and since complainants are seasonal workers as defined by the Labor Code, they cannot invoke any tenurial benefit.[6]

Petitioners further claim that many of the complainants failed or refused to undergo the medical examination required by petitioners as a prerequisite to employment. They have legal right, petitioners argue, to prescribe their own rules and regulations; and, their right to require their employees to under a medical examination is clearly legal.

Finally, petitioners allege that the Labor Arbiter and respondent NLRC erred in ordering them to pay backwages, 13th month pay and separation pay benefits to the 194 respondents (union members) when only 78 of them were able to testify and substantiate their claims. This is contrary to the agreement of both parties that those who will not be able to testify and substantiate their respective claims for actual damages will be considered to have abandoned their complaints.[7] In fact, according to petitioners, it was by virtue of this agreement that petitioners limited the rebuttal evidence (only to refute whatever may have been adduced by the said 78 union members).[8]

The above arguments boil down to the issue of whether or not complaining members of respondent union are regular employees of PFVII or are seasonal workers whose employment ceased during the off-season due to the non-availability of work.

Well-settled is the rule that findings of fact of the National Labor Relations Commission, affirming those of the Labor Arbiter are entitled to great weight and will not be disturbed if they are supported by substantial evidence.[9]

The questioned decision of the Labor Arbiter reads in part:

> xxx (T)he employment of most started in Juanuary (sic) or February 1983 with the processing of the fruits, *i.e*. mangoes and calamansi from January to July, tomatoes from January to April, then mangoes up to August and guyabano and others like papayas and pineapples until November or end of the year, and that respondent corporation operates for the whole year. (TNS [sic], of April 11, 1991 hearing, pp. 10-11). xxx Their employments on the other hand are spelled-out in complainants' Annexes `A' to `A-194' and in their individual affidavits and detailed at times for those who were called to testify in their direct testimony; and these positive testimonies are bolstered by their common but separate individual evidence, like the pay slips, apprentice agreements before their appointments, identification cards, saving accounts and pass books xxx.
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> Thus, we cannot give credence to the `Factory Workers Attendance Report' of respondent (Annex `2' marked as Exhibit `B') where it is represented in summary form or indicated that some of the complainants worked for one or several weeks or months only during some years they claimed to be employed, or did not at all worked (sic) for respondents. This exhibit is vissibly (sic) self-serving and not the best evidence to prove the insistence of respondents. Rather, the best evidence should be some kind directly prepared or signed documents in the course of their normal relation indicating with clarity the days, hours and months actually worked and signed by the workers to rebut the positive assertion in their affidavits, testimonies and the messages of the Annexes. xxx[10]

On the other hand, the NLRC's findings of fact are as follows:

> As culled from the records, it appears that herein 194 individual complainants are members of complainant union in respondent company which is engaged in the manufacture and processing of fruit xxx and vegetable purees for export. They were employed as seeders, operators, sorters, slicers, janitors, drivers, truck helpers, mechanics and office personnel.
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> xxx
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> By the very nature of things in a business enterprise like respondent company's, to our mind, the services of herein complainants are, indeed, more than six (6) months a year. We take note of the undisputed fact that the company did not confine itself just to the processing of tomatoes and mangoes. It also processed guyabano, calamansi, papaya, pineapple, etc. Besides, there is the office administrative functions, cleaning and upkeeping of machines and other duties and tasks to keep up (sic) a big food processing corporation.
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> Considering, therefore, that under of (sic) Article 280 of the Labor Code "the provisions of written agreement to the contrary notwithstanding and considering further that the tasks which complainants performed were usually necessary and desirable in the employer's usual business or trade, we hold that complainants are regular seasonal employees, thus, entitled to security of tenure.[11]

The findings of both the Labor Arbiter and the NLRC are supported by substantial evidence. There is, therefore, no circumstance that would warrant a reversal of their decisions.

Article 280 of the Labor Code provides:

> Regular and Casual Employment.- The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employers, except where the employment has been fixed for a specific project. xxx
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> An employment shall be deemed to be casual if it is not covered by the preceeding paragraph; provided, that, any employee who has rendered at least one year of service whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists.

Under the above provision, an employment shall be deemed regular where the employee: a) has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; or b) has rendered at least one year of service, whether such service is continuous or broken, with respect to the activity in which he is employed.[12]

In the case at bar, the work of complainants as seeders, operators, sorters, slicers, janitors, drivers, truck helpers, mechanics and office personnel is without doubt necessary in the usual business of a food processing company like petitioner PFVII.

It should be noted that complainants' employment has not been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of their appointment or hiring.[13] Neither is their employment seasonal in nature. While it may be true that some phases of petitioner company's processing operations is dependent on the supply of fruits for a particular season, the other equally important aspects of its business, such as manufacturing and marketing are not seasonal. The fact is that large-scale food processing companies such as petitioner company continue to operate and do business throughout the year even if the availability of fruits and vegetables is seasonal.

Having determined that private respondents are regular employees under the first paragraph, we need not dwell on the question of whether or not they had rendered one year of service. This Court has clearly stated in *Mercado, Sr. vs. NLRC*,[14] that:

> The second paragraph of Article 280 demarcates as "casual" employees, all other employees who do not fall under the definition of the preceding paragraph. The proviso, in said second paragraph, deems as regular employees those "casual" employees who have rendered at least one year of service regardless of the fact that such service may be continuous or broken.
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> xxx Hence, the proviso is applicable only to the employees who are