326 Phil. 288

FIRST DIVISION

[G.R. No. 109210, April 17, 1996]

ENGINEER LEONCIO V. SALAZAR, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION) AND H. L. CARLOS CONSTRUCTION, CO. INC., RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

This is a petition for certiorari[*] to annul the decision of the National Labor Relations Commission in NLRC Case No. 002855-92 dated 27 November 1992 which affirmed *in toto* the decision of the Labor Arbiter in NLRC NCR-00-09-05335-91 dated 29 January 1992 dismissing the complaint filed by petitioner for lack of merit. The NLRC's resolution dated 22 February 1993 is similarly impugned for denying petitioner's motion for reconsideration.

The antecedent facts are as follows:

On 17 April 1990, private respondent, at a monthly salary of P4,500.00, employed petitioner as construction/project engineer for the construction of the Monte de Piedad building in Cubao, Quezon City. Allegedly, by virtue of an oral contract, petitioner would also receive a share in the profits after completion of the project and that petitioner's services in excess of eight (8) hours on regular days and services rendered on weekends and legal holidays shall be compensable overtime at the rate of P27.85 per hour.

On 16 April 1991, petitioner received a memorandum issued by private respondent's project manager, Engr. Nestor A. Delantar informing him of the termination of his services effective on 30 April 1991. Reproduced hereunder is the abovementioned memorandum:

> April 16, 1991
>
> MEMORANDUM TO:
> LEONCIO V. SALAZAR
> Project Engineer
> MONTE DE PIEDAD BLDG. PROJECT
> Quezon City
>
> Due to the impending completion of the aforementioned project and the lack of up-coming contracted works for our company in the immediate future, volume of work for our engineering and technical personnel has greatly been diminished.

> In view of this, you are hereby advised to wind up all technical reports including accomplishments, change orders, etc.
>
> Further, you are advised that your services are being terminated effective at the close of office hours on April 30, 1991.
>
> This, however, has no prejudice to your re-employment in this company in its local and overseas projects should the need for your services arises.
>
> Thank you for your invaluable services rendered to this company.
>
> (Sgd.) NESTOR A. DELANTAR
> Project manager
>
> Noted By:
>
> (Sgd.) Mario B. Cornista
> Vice President[1]

On 13 September 1991, petitioner filed a complaint against private respondent for illegal dismissal, unfair labor practice, illegal deduction, non-payment of wages, overtime rendered, service incentive leave pay, commission, allowances, profit-sharing and separation pay with the NLRC-NCR Arbitration Branch, Manila.[2]

On 29 January 1992, Labor Arbiter Raul T. Aquino rendered a decision, the dispositive portion of which reads, thus:

> WHEREFORE, responsive to the foregoing, the instant case is hereby DISMISSED for lack of merits.
>
> SO ORDERED.[3]

The Labor Arbiter ruled that petitioner was a managerial employee and therefore exempt from payment of benefits such as overtime pay, service incentive leave pay and premium pay for holidays and rest days. Petitioner, Labor Arbiter Aquino further declared, was also not entitled to separation pay. He was hired as a project employee and his services were terminated due to the completion of the project.[4]

The Labor Arbiter, likewise, denied petitioner's claim for a share in the project's profits, reimbursement of legal expenses and unpaid wages for lack of basis.[5]

On 14 April 1992, petitioner appealed to the National Labor Relations Commission (NLRC).

On 27 November 1992, the NLRC rendered the assailed decision, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the appeal is hereby Dismissed and the assailed decision is Affirmed in toto.

SO ORDERED.[6]

On 29 January 1993, petitioner filed a motion for reconsideration which the NLRC denied for lack of merit on 22 February 1993.[7]

Hence, the instant petition wherein the following issues were raised:

I. Granting for the sake of argument without conceding, that complainant-petitioner herein was a managerial employee, was his verbal contract to be paid his overtime services as stated in paragraph 2(b) of this Petition invalid? and the payments of such overtime services as evidenced by Exhibits "B" to "B-24" (the genuineness and authenticity of which are not disputed) are they not evidentiary and of corroborative value to the true unwritten agreement between the parties in this case?

II. Is there any portion of the Labor Code that prohibits contracts between employer and employee giving the latter the benefit of being paid overtime services, as in this particular case?

III.Where an employee was induced to accept a low or distorted salary or wage level, because of an incentive promise to receive a bigger compensation than that which would be his true and correct wage level as shown by documents for the payment of his distorted wages and overtime services, is it not legally proper, in the alternative to claim payment of the differential of his undistorted salary or wage level when the promised incentive compensation is denied by his employer after the completion of the job for which he was employed?

IV.Is the Certificate of employment issued to an employee by his employer, assailable by mere affidavits of denials to the effect that said Certificate was issued because of the insistence of the employee that it be made to include a period he did not work, but which such fact of insistence or request is also denied by the employee, because he really worked during the period included in said Certificate?

V.Is the employer liable for the payment of the attorney's pay incurred by his employee in a work connected criminal prosecution against him for an act done by another employee assigned by same employer to do the act which was the subject of the criminal prosecution?[8]

Petitioner prays that judgment be rendered, thus:

1. That the decision of the NLRC and its resolution denying the Motion for Reconsideration be set aside on grounds of grave abuse of discretion and;

2. That private respondent be ordered to pay petitioner the following:

> a. the premium pays for his overtime services of 368 hours on ordinary days at 25%; 272 hours on Saturdays at 30%; 272 hours on Sundays plus 24 hours on legal holidays at 200% -computed at the rate of P27.85 per hour of undistorted wage level;
>
> b. in the alternative, to pay at least one (1) percent of 4.5 million pesos profit share, or the sum total of the differential of his salaries, in the amount of P2,184.00 per month, since April 17,1990 to April 30,1991, his undistorted salary being P6,684.00 per month; and to pay his unpaid salary for 15 days - May 1 to 15, 1991, with his undistorted salary rate;
>
> c. the amount of P3,000.00 reimbursement for what he paid his defense counsel in that criminal action which should have instead been against respondent's general manager;
>
> d. Separation pay of at least one month salary, he having been terminated unreasonably without cause, and three days service incentive leave pay; and to pay the costs;[9]

Before proceeding to the merits of the petition, we shall first resolve the procedural objection raised. Private respondent prays for the outright dismissal of the instant petition on grounds of wrong mode of appeal, it being in the form of a petition for review on certiorari (Rule 45 of the Revised Rules of Court) and not a special civil action for certiorari (Rule 65 thereof) which is the correct mode of appeal from decisions of the NLRC.

Although we agree with private respondent that appeals to the Supreme Court from decisions of the NLRC should be in the form of a special civil action for certiorari under Rule 65 of the Revised Rules of Court, this rule is not inflexible. In a number of cases,[10] this Court has resolved to treat as special civil actions for certiorari petitions erroneously captioned as petitions for review on certiorari "in the interest of justice." In *People's Security, Inc. v. NLRC,*[11] we elaborated, thus:

> Indeed, this Court has time and again declared that the only way by which a labor case may reach the Supreme Court is through a petition for certiorari under Rule 65 of the Rules of Court alleging lack or excess of jurisdiction or grave abuse of discretion (Pearl S. Buck Foundation v. NLRC, 182 SCRA 446 [1990]).
>
> This petition should not be dismissed on a mere technicality however. "Dismissal of appeal purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeal on their merits. The rules of procedure ought not to be applied in a very rigid technical sense, rules of procedure are used only to help secure, not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated" (Tamayo v. Court of Appeals, 209 SCRA 518, 522 [1992] citing Gregorio v. Court of Appeals, 72 SCRA

> 120 [1976]). Consequently, in the interest of justice, the instant petition for review shall be treated as a special civil action on certiorari. (Italics ours)

Moving on to the merits, stated differently, the issues for our resolution are the following:

1) Whether or not petitioner is entitled to overtime pay, premium pay for services rendered on rest days and holidays and service incentive leave pay, pursuant to Articles 87, 93, 94 and 95 of the Labor Code;

2) Whether or not petitioner is entitled to a share in the profits of the construction project;

3) Whether or not petitioner rendered services from 1 May to 15 May 1991 and is, therefore, entitled to unpaid wages;

4) Whether or not private respondent is liable to reimburse petitioner's legal expenses and;

5) Whether or not petitioner is entitled to separation pay.

On the first issue, the NLRC concurred with the Labor Arbiter's ruling that petitioner was a managerial employee and, therefore, exempt from payment of overtime pay, premium pay for holidays and rest days and service incentive leave pay under the law. The NLRC declared that:

> Book III on conditions of employment exempts managerial employees from its coverage on the grant of certain economic benefits, which are the ones the complainant-appellant was demanding from respondent. It is an undisputed fact that appellant was a managerial employee and such, he was not entitled to the economic benefits he sought to recover. [12]

Petitioner claims that since he performs his duties in the project site or away from the principal place of business of his employer (herein private respondent), he falls under the category of "field personnel." However, petitioner accentuates that his case constitutes the exception to the exception because his actual working hours can be determined as evidenced by the disbursement vouchers containing payments of petitioner's salaries and overtime services.[13] Strangely, petitioner is of the view that field personnel may include managerial employees.

We are constrained to disagree with petitioner.

In his original complaint, petitioner stated that the nature of his work is "supervisory-engineering."[14] Similarly, in his own petition and in other pleadings submitted to this Court, petitioner confirmed that his job was to supervise the laborers in the construction project.[15] Hence, although petitioner cannot strictly be classified as a managerial employee under Art. 82 of the Labor Code,[16] and Sec.