

THIRD DIVISION

[G.R. No. 114132, November 14, 1996]

**FE M. ALINDAO, PETITIONER, VS. HON. FELICISIMO O. JOSON,
IN HIS CAPACITY AS THE ADMINISTRATOR, PHILIPPINE
OVERSEAS EMPLOYMENT ADMINISTRATION; PHILIPPINE
OVERSEAS EMPLOYMENT ADMINISTRATION, AND HISHAM
GENERAL SERVICES CONTRACTOR, RESPONDENTS.**

DECISION

DAVIDE, JR., J.:

In this petition for *certiorari*, prohibition and *mandamus* under Rule 65 of the Rules of Court, petitioner Fe M. Alindao seeks to set aside the 10 February 1994 Order of respondent Philippine Overseas Employment Administration (POEA) Administrator Felicisimo O. Joson in POEA Case No. (L) 89-08-703, which reversed the 28 November 1990 Order, for having been issued with grave abuse of discretion.

The material facts leading to the instant petition are not disputed.

Petitioner applied, was interviewed and qualified for employment in Saudi Arabia as a laboratory aide, for a term of one year and with a monthly salary of US\$370.00, through private respondent Hisham General Services Contractor (hereinafter Hisham).^[1] She paid Hisham P15,000.00 as a placement fee, but no receipt was issued. She did not insist on a receipt as she saw her name written in a logbook to record the transaction and Hisham assured her of employment by presenting her passport already stamped with a visa and her plane ticket.

Petitioner left for Saudi Arabia on 9 March 1988. Upon arrival, she was met by a representative of her employer, the Dahem Clinic. She was told she would stay at Alcobar until needed.

Two weeks later, the petitioner's employer brought her to his residence and was made to work as a domestic helper. Her employer did not treat her well and paid her only 660 Saudi riyals. The unfair working conditions prompted the petitioner to ask that she be sent home, but she was merely returned to Alcobar. She worked for only a month and six days. From there, she worked at several residences until she saved enough money to return home.

She arrived in the Philippines on 7 July 1989, and filed with the POEA a complaint against Hisham for breach of contract, violation of the terms and conditions of its authority as a service contractor, and violation of the following provisions of the Labor Code: Article 32 (requiring issuances of receipts for fees paid), Article 34 (a) (prohibiting one from charging an amount greater than that specified in the schedule of allowable fees), and Article 34(b) (prohibiting one from furnishing false information in relation to recruitment or employment [misrepresentation]).^[2] The

case was docketed as POEA Case No. (L) 89-08-703.

A request for verification revealed that Hisham's license as a service contractor was to expire on 7 March 1991.^[3]

After appropriate proceedings, POEA Administrator Jose N. Sarmiento handed down on 28 November 1990 in POEA Case No. (L) 89-08-703: (a) a Decision on the petitioner's money claims; and (b) an Order pertaining to the administrative aspect (recruitment) of the case.

The dispositive portion of the Decision reads as follows:

In view of the foregoing, respondent Hisham General Services Contractor is hereby ordered to pay complainant the following:

1. US\$3,120 or its peso equivalent based on the current rate of exchange representing the total salary differentials for 12 months at US\$260.00 a month.
2. P20,603.00 refund of the plane ticket.

SO ORDERED.^[4]

The dispositive portion of the Order reads:

WHEREFORE, premises considered, respondent Hisham General Services is hereby ordered to refund complainant the amount of P13,500.00 representing the excess amount of her placement fee. (as Hisham was licensed merely as a service contractor, it was authorized only to recruit workers for its own employment abroad and to charge a maximum of P1,500.00 as documentation expenses.

Further, respondent is hereby ordered suspended for two (2) months or pay a penalty fine of P20,000.00 for illegal exaction, and an additional penalty of suspension for two (2) months or fine of P20,000.00 for misrepresentation.

It is understood that the penalty of suspension shall be cumulatively served.

SO ORDERED.^[5]

On 27 December 1990, Hisham appealed the *Decision* to the National Labor Relations Commission (NLRC),^[6] which docketed the appeal as NLRC NCR CA 00150291, and filed a motion for reconsideration of the Order with the POEA.^[7]

In its resolution of 30 July 1992,^[8] the NLRC affirmed in toto the challenged Decision. Hisham's motion to reconsider^[9] the NLRC resolution was denied by the NLRC in its resolution of 17 February 1993.^[10] The NLRC resolution became final and executory on 4 April 1993 and the corresponding entry of judgment was made on 18 May 1993.^[11]

On 22 April 1993, the petitioner filed with the POEA a motion for execution of the Decision on the money claims,[12] which Hisham opposed on 29 April 1993 on the ground that Dahem Clinic was already accredited with another agency.[13] On 10 September 1993, the POEA granted the petitioner's motion[14] and on 7 October 1993, it issued a writ of execution[15] which was, however, for execution of both the Decision on the money claims and the Order in the administrative aspect of the case.

On 14 October 1993, Hisham then filed a motion for clarification and/or modification of the writ of execution, asserting that the Order in the administrative case could not be enforced as the motion for reconsideration of the Order was still pending with the POEA and remained unresolved.[16]

On 10 February 1994, respondent POEA Administrator Felicisimo O. Joson issued the Order subject of this petition, the pertinent portions of which read as follows:

Complainant failed to establish or even show the details of how, when, and where and to whom she paid the amount of P15,000.00. [W]e subscribe to the Jurisprudence on this matter that mere general allegations of payment of excessive placement fees cannot be given merit as the charge of illegal exaction is considered a grave offense which could cause the suspension or cancellation of the agency's license and should be proven and substantiated by clear, credible and competent evidence which is not obtaining in the case at bar.

We likewise find unmeritorious the charge of misrepresentation under Article 34 (b) of the Labor Code, as amended. We understand that complainant worked beyond the term of her employment contract which was sixteen (16) months while she was hired for twelve (12) months. We find it improbable that if there was really a violation of the contract, complainant could not have waited for the expiration of said contract much more extended her stay with her employer. Complainant's allegations are contrary to the normal reaction of a person who was aggrieved. Taking into consideration her applied position as a laboratory aide which calls for a higher educational qualification than a domestic helper, she could have well asserted her rights and availed of the remedy if not immediately but within a reasonable length of time.

We noted that the alleged change of complainant's position was without the knowledge and consent of respondent agency. It was shown that respondent never knew or learned that complainant had a complaint not until after the filing of the instant case. Based from the foregoing circumstances respondent's liability is limited if there is substantial evidence that it has committed representation in the processing of complainant which is not obtaining in this case.

WHEREFORE, in the light of the foregoing premises, we find the Motion for Reconsideration meritorious and this case is hereby ordered dismissed.[17]

Respondent Joson took cognizance of Hisham's Motion for Reconsideration of the 28 November 1990 Order because it was filed prior to the effectivity of the 1991 POEA Rules and Regulations; hence, it was governed by the "198[5] POEA Rules and Regulations."

On 16 March 1994, the petitioner filed this petition for Certiorari, Prohibition and Mandamus, with prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction, Damages, and Disbarment with this Court. In the main, the petitioner asserts most strongly that the 28 November 1990 Decision had become final and executory, thus respondent Joson's 10 February 1994 Order which had the effect of modifying the said decision, was issued with grave abuse of discretion. She maintains that respondent Joson should have applied the 1991 POEA Rules and Regulations, for, being rules of procedure, they may be applied retroactively. She further contends that Hisham's appeal of the money claims case carried with it the appeal of the recruitment case, as the POEA could not have disposed of one without disposing of the other; moreover, citing *Nuñal vs. Court of Appeals*,^[18] a final and executory judgment may not be modified even if the modification was meant to correct what was perceived to be erroneous conclusions of fact. As to the propriety of this petition, despite the absence of a motion for reconsideration, the petitioner alleges inadequacy of an appeal or a motion for reconsideration, and the patent nullity of the 10 February 1994 Order. She concludes with a prayer for the reversal of the questioned order, immediate execution of the 28 November 1990 Decision, an award of P100,00.00 as exemplary damages, and the disbarment of respondent Joson for professional misconduct.^[19]

On 28 July 1994, the Office of the Solicitor General filed its Comment contending that the 28 November 1990 Order imposing administrative disciplinary sanctions for violations not arising from an employer-employee relationship was immediately executory and inappealable pursuant to Section 6 (Inappealable Disciplinary Cases), Rule V (Appeal), Book VI (Adjudication Rules) and Section 3 (Imposition of Administrative Sanctions Immediately Executory), Rule VI, Book VI (Adjudication Rules) of the 1985 POEA Rules and Regulations. Moreover, while a motion for reconsideration was not expressly prohibited, no provision in the said Rules and Regulations allowed such a motion. Further, even disregarding jurisdictional infirmities, what stands un rebutted is that Hisham committed misrepresentation, breach of contract and illegal exaction. The Office of the Solicitor General continues that under the circumstances, it would have been impossible to require the petitioner to produce a receipt and unreasonable to expect her to have lodged a complaint against Hisham at an earlier time. It then recommends that the petitioner's complaint for disbarment be referred to the Integrated Bar of the Philippines for investigation and appropriate action and that the POEA be granted a new period within which to file its Comment.^[20]

On 3 January 1995, Hisham filed its Comment and admitted the final and executory nature of the Decision on the money claims. However, it points to Section 1, Rule IV, Book VI and Rule V, Book VII of the 1991 POEA Rules and Regulations as support for its thesis that the administrative aspect of the case could not have been deemed final and executory. Hisham then questions the propriety of the petition in light of the non-observance of the rule on exhaustion of administrative remedies, which mandates that the questioned Order should have been first appealed to the Office of the Secretary of the Department of Labor and Employment and the Office of the