

## NINETEENTH DIVISION

[ CA-G.R. SP NO. 07706, January 30, 2015 ]

**PHILCOX (PHILS.), INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION & SOTERO G. CABUGUAS, RESPONDENTS.**

### DECISION

**LOPEZ, J.:**

This is a special civil action for *Certiorari* under Rule 65 of the Rules of Court. Petitioner seeks to annul and set aside the following:

- 1) The December 14, 2012 Decision<sup>[1]</sup> of public respondent in NLRC Case No. VAC-08-000508-2012 which disposed the case as follows:

**"WHEREFORE**, premises considered, the decision appealed from is hereby **AFFIRMED WITH MODIFICATION** reiterating the regular employment of complainant but declaring the latter's illegal dismissal. Respondent Philcox Philippines, Inc. is ordered to pay complainant the total amount of P273,685.50 in concept of separation pay, backwages, 13<sup>th</sup> month pay, service incentive leave pay and attorney's fees temporarily computed until the promulgation of this Decision on 14 December 2012.

**SO ORDERED."**

and

- 2) The March 27, 2013 Resolution<sup>[2]</sup> of public respondent which denied petitioner's Motion for Reconsideration.

#### **The Evidence for the Petitioner**

Petitioner is engaged in the business of, among others, building, servicing and maintaining infrastructure for telecommunication projects as well as selling supplies and equipment.

On July 1, 2008, petitioner entered into an Agreement for Voice and/or Data Station Installation Services<sup>[3]</sup> with Innove Communications, Inc. (Innove) which is a wholly-owned Globe subsidiary and does business under service marks or business names Globe Lines, Globe Wi-max and Globe Broadband.

Petitioner hired respondent and several others as project employees to help

petitioner perform its contractual obligations to Innove within the service areas in Bacolod. The employment contract expressly stipulated that the employment was "co-terminus with the contract of PHILCOX with Globe/Innove Telecommunication projects, or unless sooner terminated for cause."

While petitioner tried its best to work for the renewal of its Agreement with Innove, competing contractors offering cheaper rates made it difficult to obtain a renewal. After its expiry on June 30, 2010, the parties agreed to an extension of the Agreement for the period July 1, 2010 to December 31, 2010. All workers, including complainant, were each given notice<sup>[4]</sup> of the December 31, 2010 expiration date. However, on December 21, 2010, the parties agreed to another extension of the Agreement to cover the period January 1, 2011 to February 28, 2011. The workers were also given notices<sup>[5]</sup> of this new extension period. On February 28, 2011, the Agreement expired and so did the employment contracts of all of petitioner's workers assigned to the Bacolod Service Areas of Globe and Innove. Petitioner thereafter filed with the Department of Labor and Employment an Establishment Employment Report.<sup>[6]</sup>

Private respondent was not illegally dismissed from employment by petitioner. The termination of his employment was brought about by the expiration of his project employment contract.

### **The Evidence for the Private Respondent**

Private respondent was first hired by petitioner on May 20, 2000 as Driver-Installer at its project in Bacolod City. Petitioner was engaged as contractor of Innove which is a subsidiary of Globe and as such, renders services and several installation works relevant to the operation of Globe. From May 20, 2000 up to 2006, private respondent worked as operation-driver/installer. Thereafter, he was assigned in sales and marketing as technical driver coordinator from 2006-2009. Beginning from 2009 until he was terminated from employment on February 28, 2011, private respondent served as operation-driver installer and repairman.

In 2007, after having worked for petitioner for almost seven (7) years since May 20, 2000, private respondent was made to sign a contract every six (6) months, the last of which was executed on March 23, 2010. Except for extension of services made known to private respondent through notices, no subsequent contract was executed by petitioner and private respondent.

On February 28, 2011, private respondent was terminated from his employment on the ground that petitioner's Agreement with Innove had already expired.

Contending that he is not a project employee, private respondent filed a Complaint<sup>[7]</sup> for illegal dismissal with various money claims before the NLRC Regional Arbitration Branch No. VI in Bacolod City which docketed the case as NLRC RAB Case No. VI-01-10055-12.

On June 11, 2012, Labor Arbiter Jessie G. Sullano rendered a Decision,<sup>[8]</sup> the dispositive portion of which states:

**"WHEREFORE,** premises considered, judgment is hereby rendered as follows:

1. Holding that complainant was a regular employee of the herein respondents;
2. Directing the respondents Philcox Philippines, Inc. and Antonio Tioco, solidarily and jointly liable to pay complainant the sum of ONE HUNDRED SEVEN THOUSAND FIVE HUNDRED TWENTY FIVE PESOS (PHP107,525.00) representing his separation pay, 13th month pay, service incentive leave pay, refund of cash bond and attorney's fee;
3. Directing the respondents to deposit the afore-quoted sum of (PHP107,525.00) with the Cashier of this Regional Arbitration Branch within ten (10) days from receipt of this decision.

**SO ORDERED."**

Aggrieved by the Decision of the Labor Arbiter, petitioner interposed an appeal to public respondent which rendered the assailed Decision and Resolution now subject of this Petition for *Certiorari* before Us.

In its Petition, petitioner contended that public respondent gravely abused its discretion when it held that private respondent was a regular employee who was illegally dismissed from employment.

#### **Our Ruling**

The petition is without merit.

At the outset, it must be pointed out that a *certiorari* proceeding is limited in scope and narrow in character. The special civil action for *certiorari* lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. *Certiorari* will issue only to correct errors of jurisdiction and not mere errors of judgment, particularly in the findings or conclusions of the quasi-judicial tribunals or lower courts. For errors of judgment, appeal, if provided for by law, is the proper remedy and not *certiorari*.<sup>[9]</sup> Accordingly, in this petition for *certiorari* before Us, the judicial inquiry should be limited to the issue of whether or not the NLRC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose. The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive