FOURTEENTH DIVISION

[CA – G.R. SP No. 127505, January 06, 2015]

CASURECO III, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, APOLLO BAYLON AND JOSE CARIAGA, RESPONDENTS.

D E C I S I O N

GALAPATE-LAGUILLES, J:

The Decision[1] of the National Labor Relations Commission (public respondent) in NLRC Case No. LAC 01-000392-12 dated July 5, 2012 which modified the Decision[2] of the Labor Arbiter dated December 6, 2011 is the subject of this petition for *certiorari* filed via Rule 65 of the Rules of Court, as amended.

The facts as borne by the records are:

Petitioner CASURECO III (Casureco) is an electric cooperative organized and existing under Philippine laws engaged primarily in the business of distributing electric services to its consumers.

On various dates, Casureco hired private respondents Apollo Baylon (Baylon) and Jose Cariaga (Cariaga) to augment its workforce as shown by the latter's contracts denominated as *Contract of Services of Emergency Employee.* Baylon was hired as a Utility Clerk in the campaign for collection of petitioner's bills;[3] as a disconnector, [4] as an emergency employee[5] and to perform such other related functions as required by petitioner. On the other hand, private respondent Cariaga was also hired as a disconnector, as a utility clerk,[6] later on again as a disconnector,[7] an emergency employee8 and to perform such other related functions as required by petitioner.

When private respondents' contracts were not extended, they filed a complaint for illegal dismissal, regularization, underpayment of wages, 13th month pay, cost of living allowance, rice allowance, year-end bonus, vacation leave, attorney's fees and damages[9] before the National Labor Relations Commission Sub-Regional Arbitration Branch V, Naga City.

Casureco on the other hand averred that private respondents were not its regular employees because the latter did not work for it for at least one year. Moreover, their employment contracts were clear that they were contractual employees whose terms of employment expired when their respective contracts lapsed, and that they were merely hired in order to augment the existing labor force.[10]

On November 28, 2011, the Labor Arbiter dismissed the complaint and held that:

> Considering all the foregoing, this Office believes and so holds that there is no substantial evidence that complainants have rendered service of at least one (1) year, whether continuous or broken. Because their employment periods were less than one (1) year, the provisions of the second paragraph of Article 280 of the Code does not apply to them. Their employment can also be considered to have been fixed for a definite period.
>
> Because complainants are not regular employees of respondent CASURECO III, the latter are correct that complainants cannot be awarded with reinstatement, backwages, 13th month pay, damages, attorney's fees and other similar claims. Complainants were not illegally dismissed from their work in respondent CASURECO III because their employment contracts simply expired.
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> Wherefore, premises considered, judgment is hereby rendered dismissing the complaints for illegal dismissal, for lack of merit.
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> All other claims and charges are likewise dismissed, for lack of factual and/or legal basis.
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> SO ORDERED.

Private respondents timely filed their appeal before the public respondent NLRC. The public respondent, in its Decision dated July 5, 2012, partly granted private respondents' appeal. The dispositive portion of the assailed decision states:

> WHEREFORE, the herein appeal is PARTLY GRANTED and the appealed Decision of the Labor Arbiter is MODIFIED as follows:
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> 1. Declaring complainants Apollo L. Baylon and Jose Cariaga as regular employees of respondent electric cooperative and declaring their dismissal from the service as illegal;
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> 2. Declaring complainants Fernando Ronnie Briñas, Julio Saño and Roger Morillo to have been validly terminated from the service due to expiration of their respective employment contracts;
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> 3. Directing respondent electric cooperative, through its responsible officers, to reinstate complainants Baylon and Cariaga to their previous positions without loss of seniority rights and other privileges; and
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> 4. Ordering respondent electric cooperative, through it responsible officers, to pay complainants Baylon and Cariaga their full backwages from the time they were separated from the service on 20 April 2008 and 23 July 2008, respectively, until the finality of this Decision, including their proportionate 13th month pay and attorney's fees equivalent to ten percent (10%) of the total monetary award.
>
> 5. All other claims of complainants are dismissed for lack of factual and legal bases.

> The computation made by the Computation and Examination Unit (CEU) of this Commission shall form an integral part of this Decision.
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> SO ORDERED.

In its Motion for Reconsideration[11], Casureco, among others, insists that Cariaga failed to perfect his appeal since he did not sign the Joint Verification and Certification Against Non-Forum Shopping.[12] The public respondent, in its Resolution[13] dated September 24, 2012 denied petitioner's appeal.

Petitioner is now here before Us presenting the following issues for Our resolution:

> A.
> Whether or not private respondent Jose Cariaga perfected an appeal.
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> B.
> Whether or not private respondent Apollo Baylon worked for at least one year for petitioner CASURECO III.

It is the petitioner's position that Cariaga did not perfect his appeal since he failed to sign the Joint Verification and Certification against forum shopping.

We do not agree.

While We underscore and emphasize that parties must comply with the rules of procedure especially the rules on verification and non-forum shopping, We must also note that these rules are established to secure substantial justice. Being instruments for speeding and efficient administration of justice, they must be used to achieve such end, not to derail it.[14] Thus, when a strict and literal application of the rules on non-forum shopping and verification will result in a patent denial of substantial justice, these may be liberally construed.[15]

Despite Cariaga's failure to sign the Joint Verification and Certification Against Forum-Shopping, his appeal is still perfected. Cariaga, along with his co-complainants before the labor tribunals, have a collective interest in this case. Together, they filed the complaint before the labor arbiter. Thus, not only that they all knew the truthfulness of the instant petition and the allegations stated therein; his co-complainants will also be in the position to know whether or not Cariaga has instituted or has a pending case regarding the same issues in another tribunals. Cariaga's failure to sign the Joint Verification and Certification Against Forum-Shopping is therefore not detrimental to Casureco. Moreover, the Supreme Court has relaxed in not a few instances, under justifiable circumstances, the rule requiring the submission of a Certification against Forum-Shopping considering that although it is obligatory, it is not jurisdictional.[16] The disquisition of the public respondent on these matters is hereby reiterated, *viz*:

As regards the failure of complainant Cariaga to sign the Verification and Certification Against Forum-Shopping, it must be pointed out at this stage that only complainants Baylon, and Briñas signed the said Verification. Nonetheless, the effects of non-verification were thoroughly discussed in *Sari-Sari Group of Companies vs. Piglas Kamao* as follows:

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"As to the Verification, non-compliance therewith does not necessarily render the pleading fatally defective; hence, the court may order a correction if Verification is lacking; or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the Rules may be dispensed with in order that the ends of justice may thereby be served."

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'These two signatories are unquestionably real parties in interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the Petition. This verification is enough assurance that the matters alleged therein have been made in good faith or are true and correct, not merely speculative. The requirement of verification has thus been substantially complied with.'

Applying the foregoing jurisprudence to the instant case, we can deduce that the Verification of complainants Baylon and Briñas in their appeal is considered as sufficient compliance with the requirement of the law.

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> In this case, **complainants Baylon and Briñas share a common interest with the other complainants as regards the regards the resolution of the labor dispute between them and respondents. They collectively sued respondents for illegal dismissal and have collectively appeal the decision of the Labor Arbiter *a quo*. Similarly, there is sufficient basis for complainants Baylon and Briñas to speak on behalf of their co-complainants in stating that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there any other pending action or claim in another court or tribunal involving the same issues. Thus, even if only complainants Baylon and Briñas signed the Certificate of Non-Forum Shopping, the rule on substantial compliance applies.** (emphasis Ours) (footnotes omitted)[17]

Now into the crux of the controversy.

We must emphasize first that factual findings of administrative bodies are, as a rule, binding on this Court, but this is true only when they do not come under the established exceptions. One of these is where the findings of the labor arbiter and

the NLRC are contrary to each other.[18] Here, there is a necessity for Us to review the facts of the case anew in view of the divergent findings of the Labor Arbiter and the public respondent.

It is the position of the petitioner that the public respondent has committed grave abuse of discretion amounting to excess or lack of jurisdiction in rendering the assailed judgment finding Baylon and Cariaga to be regular employees of Casureco.

We are not persuaded.

To justify the grant of the extraordinary remedy of *certiorari,* petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by law or to act at all in contemplation of law.[19]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia,* its findings and the conclusions reached thereby are not supported by substantial evidence.[20]

Art. 294 of the Labor Code[21], as amended, clearly states that and We quote:

> Art. 294. *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 employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the preceding 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. (Emphasis supplied.)

The test to determine whether the employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer; and if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business.[22] There are two separate instances whereby it can be determined that an employment is regular: (1) if the particular activity performed