FOURTEENTH DIVISION

[CA – G.R. SP No. 121723, March 03, 2014]

P3 GLOBAL LOGISTIC, INC. AND/OR BRANDON YUJUICO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), HON. LABOR ARBITER ALIMAN D. MANGANDO, AND NORBE A. BORROMEO, RESPONDENTS.

D E C I S I O N

GALAPATE-LAGUILLES, J:

Before this Court is a Petition for Certiorari[1] filed in accordance with Rule 65 of the Rules of Court assailing the following issuances of the National Labor Relations Commission in NLRC LAC No. 01-000013-11/ NLRC NCR Case No. 03-04248-10, entitled "Norbe A. Borromeo, versus P-3 Global Logistics Inc./Brendon Uchico & Arbin Acosta:"

a.) *Decision*[2] dated April 29, 2011 *denying* petitioner's appeal; and

b.) *Resolution*[3] dated July 29, 2011 denying petitioner's *Motion for Reconsideration* of the adverse judgment.

The following are the factual antecedents:

Private respondent Norbe A. Borromeo (private respondent) was hired as a delivery helper by petitioner P3 Global Logistics,Inc. (petitioner) on March 4, 2009. Private respondent worked from 7:00 am to 8:00 pm or thirteen (13) hours everyday, including Sundays and holidays with a daily wage of P280.00. Private respondent thus requested for a salary increase consistent with the mandatory minimum wage. Private respondent further found out that his contributions to the SSS, PAG-IBIG, and Philhealth were deducted from his wage but, unfortunately, not remitted to the concerned government agencies.

On February 12, 2010, a *Termination Letter*[4] was issued by petitioner informing private respondent of his dismissal from service which reads in part as follows:

"Please be informed that being a probationary employee of P3 Global Logistic, Inc. we have decided to evaluate and carefully value your performance to achieve a fair and just decision. Up to this extent, our company gratefully acknowledges your support towards our operation. It is also a great pleasure to work with you for the past few months and deeply to state that we can not (sic) degrade your camaraderie.

> However, after a careful determination and evaluation and appraisal of your performance delivered, our company had firmly resolved that you failed to carry out our standard guidelines and definite courses, therefore with the aforesaid supposition, effective February 15, 2010, we regret to advise you that your services as TPD helper is no longer needed in this company."

Aggrieved, private respondent filed a *Complaint*[5] dated March 22, 2010 for illegal dismissal, underpayment of salary/wages, 13th month pay, holiday pay, service incentive leave pay, non-payment of separation pay and ECOLA.

Petitioner on the other hand asseverated in its Position Paper[6], that private respondent's dismissal effective February 15, 2010 for failure to meet company standards was valid and justified as the same was well within the limited legal six (6) month probationary period which is reckoned from the date of hiring[7] on October 1, 2009.

On September 30, 2010, Labor Arbiter Aliman D. Mangandog rendered a *Decision*[8] upholding private respondent's claim that he was illegally dismissed. Said *Decision* was thereafter affirmed on appeal[9] by the Sixth (6th) Division of the National Labor Relations Commission (respondent NLRC). Dissatisfied, petitioner filed a *Motion for Reconsideration*[10] but the same was denied in a *Resolution*[11] dated July 29, 2011.

The primordial issue in this Petition is whether or not respondent NLRC acted with grave abuse of discretion in issuing the challenged rulings finding petitioner liable for illegal dismissal.

Before ruling on the merits of the Petition, We find it necessary first to discuss the propriety of the issues raised herein vis-a-vis a certiorari petition under Rule 65.

A cursory reading of the Petition easily reveals that petitioner raises purely factual issues, which essentially revolve around the propriety or soundness of the Decision rendered by the public respondent. Elsewise stated, petitioner is in reality asking Us to review the challenged rulings in its entirety particularly its evidentiary anchors. This course of action, however, is beyond the province of *certiorari* under Rule 65. In *Certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field; nor substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.[12] The query in this proceeding is limited merely to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision.[13] At the risk of being repetitive, it does not include a correction of the evaluation of the evidence.[14] As such, only errors of jurisdiction, not errors of judgment, may be entertained in such a petition. As exhaustively elucidated in ***AGG Trucking and/or Alex Ang Gaeid vs. Melanio B. Yuag***[15]

> "The raison d'etre for the rule is that when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a situation, the administration of justice would not survive. Hence, **where the issue or question involved affects the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a special civil action for certiorari.**" (boldness and underscoring supplied)

We could grant the *Petition* if We find that the issuance of the assailed decision or resolution is tainted with grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties. Necessarily, We can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded in relation to all other evidence on record.[16] We, however, find no cogent reason to do so in the instant case.

Nevertheless, We address petitioner's insistence that respondent NLRC gravely abused its discretion when it ruled against the validity of the dismissal.

Petitioner disputes the findings of respondent NLRC arguing that there is no illegal dismissal to speak of since private respondent is a mere probationary employee with a limited tenure subject to regularization conditioned on his satisfactory performance.

We do not agree.

The legal provision that comes to fore is Article 281 of the Labor Code, as amended, which reads as follows:

> "Art. 281. Probationary Employment.—Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. **The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement.** An employee who is allowed to work after a probationary period shall be considered a regular employee." (boldness and underscoring supplied)

But hand in hand with the above is Book VI, Rule I, Sec. 6, of the Implementing Rules which states:

> "*Probationary employment*.—There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular

employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just or authorized cause, when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.

(d) **In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee**." (boldness and underscoring supplied)

There is probationary employment when the employee upon his engagement is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.[17] Thus, the word "probationary", as used to describe the period of employment, implies the purpose of the term or period, not its length.[18]

A probationary employee, like a regular employee, enjoys security of tenure. However, in cases of probationary employment, aside from just or authorized causes of termination, an additional ground is provided under Article 281 of the Labor Code, i.e., the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with the reasonable standards made known by the employer to the employee at the time of engagement.[19] It must be noted that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just cause and failure to do so would mean that the dismissal is not justified.[20] This burden of proof appropriately lies on the shoulders of the employer and not on the employee because a worker's job has some of the characteristics of property rights and is therefore within the constitutional mantle of protection. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.[21]

Based on the facts established in this case and in light of extant law and jurisprudence, private respondent is a regular employee from the outset and not