Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DIONISIO DACLES,* Petitioner,

- versus -

MILLENIUM ERECTORS CORPORATION and/or RAGAS TIU, Respondents.

G.R. No. 209822

Present:

SERENO, *C.J.*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:
JUL 08 2015

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 8, 2013 and the Resolution[3] dated October 11, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 122928, which annulled and set aside the Decision[4] dated October 17, 2011 and the Resolution[5] dated December 2, 2011 of the National Labor Relations Commission (NLRC) in NLRC Case No. NCR 06-07985-10, thereby reinstating the Decision[6] dated April 4, 2010

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* "Dionesio A. Dacles" in some parts of the records; see *rollo*, p. 52.

1 Id. at 14-46.

2 Id. at 51-64. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla concurring.

3 Id. at 67-68.

4 Id. at 145-153. Penned by Commissioner Nieves E. Vivar-De Castro with Commissioner Isabel G. Panganiban-Ortiguerra concurring.

5 Records, pp. 155-156.

6 Id. at 88-101. Penned by Labor Arbiter Fe S. Cellan.

of the Labor Arbiter (LA) dismissing petitioner Dionisio Dacles's (petitioner) illegal dismissal complaint.

The Facts

Respondent Millenium Erectors Corporation (MEC) is a domestic corporation engaged in the construction business.[7] On October 6, 2010, petitioner instituted a complaint[8] for illegal dismissal with money claims against MEC and its owner/manager, respondent Ragas Tiu[9] (respondents), before the NLRC, National Capital Region, docketed as NLRC-NCR-06-07985-10.

Petitioner claimed that he was hired by respondents as a mason in 1998. On June 7, 2010, while he was working on a project in Malakas Street, Quezon City (QC), he was advised by respondent's officer, Mr. Bongon, to move to another project in Robinson's Cubao, QC. However, upon arrival at the site, he was instructed to return to his former job site and, thereafter, was given a run-around for the two (2) succeeding days. When he requested to be given a post or assigned to a new project, he was told by the paymaster not to report for work anymore, prompting him to file the illegal dismissal complaint, with claims for service incentive leave (SIL) pay, overtime pay, holiday pay, 13th month pay, rest day and premium pay, and salary differentials.[10]

For their part, respondents denied having illegally dismissed petitioner, claiming that he was a mere project employee whose contract expired on June 4, 2010 upon the completion of his masonry work assignment in the Residential & Commercial Building Project (RCB-Malakas Project) along East Avenue, QC.[11] Respondents further denied having employed petitioner since 1998 because it was only organized and started business operations in February 2000.[12] They averred that petitioner applied and was hired as a mason on October 8, 2009 and assigned to the Newport Entertainment and Commercial Center Project in Pasay City (NECC Project), which was completed on March 3, 2010. Thereafter, petitioner applied anew and was hired as a mason on April 15, 2010 to work on the RCB-Malakas Project.[13] Petitioner's termination from both projects was then duly reported to the Department of Labor and Employment (DOLE) Makati/Pasay Field Office.[14]

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7 Id. at 37.
8 Id. at 22.
9 *Rollo*, p. 14.
10 Records, pp. 28-29, and 38.
11 Id. at 38, 40, and 69.
12 Id. at 67.
13 Id. at 38, 49, and 53.
14 See Establishment Employment Reports; id. at 50-51, 58-59.

The LA Ruling

In a Decision[15] dated April 4, 2010, the LA dismissed the illegal dismissal complaint, finding that petitioner is a project employee given that: (*a*) the employment contracts between MEC and petitioner show that the latter, although repeatedly rehired, was engaged in particular projects and for specific periods; (*b*) the periods of employment were determinable with a known beginning and termination; and (*c*) the DOLE was notified of petitioner's termination at the end of each project. Consequently, the LA held that petitioner cannot validly claim that he was illegally dismissed because his separation was a consequence of the completion of his contract.[16] The LA likewise denied petitioner's money claims for lack of evidentiary support.[17]

Aggrieved, petitioner appealed[18] to the NLRC, docketed as NLRC LAC No. 05-001356-11.

The NLRC Ruling

In a Decision[19] dated October 17, 2011, the NLRC reversed the LA ruling and instead, declared that petitioner was a regular employee. At the outset, the NLRC denied respondents' assertion that respondents could not have employed petitioner in 1998[20] since it was only registered with the Securities and Exchange Commission on February 1, 2000, as evinced by its Certificate of Incorporation,[21] ruling that the said document only proves that MEC has been operating as such without the benefit of registration; thus, the same should not be taken against petitioner's positive assertion that he was employed way back in 1998.

Accordingly, the NLRC ruled that petitioner was a regular employee since he was originally employed in 1998 without a fixed period to perform tasks that were necessary and desirable to MEC's business, and which status cannot be altered by a subsequent contract stating otherwise. To this end, it pointed out that petitioner cannot be lawfully dismissed based on the completion of the last two (2) projects to which he was assigned and that the employment contracts and termination reports submitted by MEC were merely issued to circumvent the law on regularization of the employment of construction workers.[22] The NLRC, however, denied petitioner's other

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15 Id. at 88-101.
16 Id. at 98.
17 Id. at 99-100.
18 Id. at 106-120.
19 *Rollo*, pp. 145-153.
20 Erroneously stated as 1988; see id. at 145 and 150.
21 CA *rollo*, p. 87.
22 *Rollo*, pp. 148-151.

money claims for lack of legal basis.[23] In fine, respondents were ordered to reinstate petitioner with full back wages, plus attorney's fees.[24]

Dissatisfied, respondents moved for reconsideration[25] which was denied in a Resolution[26] dated December 2, 2011. Hence, they filed a petition for review on *certiorari*[27] before the CA.

The CA Ruling

In a Decision[28] dated April 8, 2013, the CA annulled and set aside the NLRC's ruling and reinstated the LA's ruling.[29] It held that petitioner has not presented evidence to substantiate his claim of illegal dismissal. In this relation, it observed that the NLRC made a hasty conclusion that MEC has been operating without the benefit of registration as early as 1998, and in so doing, erroneously relied on the self-serving and unsubstantiated statement of petitioner. Therefore, the CA upheld the LA's finding that petitioner is a project employee who was first hired as a mason for the NECC Project from October 8, 2009 until its completion on March 3, 2010, and second, for the RCB-Malakas Project from April 15, 2010 also until its completion. It further gave emphasis on the fact that petitioner's termination was duly reported by respondents to the DOLE.[30]

Petitioner moved for reconsideration[31] but was denied in a Resolution[32] dated October 11, 2013; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in holding that the NLRC gravely abused its discretion in declaring that petitioner was a regular employee, and not a project employee.

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23 Id. at 151.
24 Id. at 152.
25 See respondent's Motion for Reconsideration dated November 8, 2011; records, pp. 143-151.
26 Id. at 155-156.
27 *Rollo*, pp. 90-121.
28 Id. at 51-64.
29 Id. at 63.
30 Id. at 60-63.
31 See petitioner's Motion for Reconsideration dated April 24, 2013; id. at 70-89.
32 Id. at 67-68.

The Court's Ruling

The petition is without merit.

First, it must be stressed that to justify the grant of the extraordinary remedy of *certiorari*, petitioner 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 or to act at all in contemplation of law.[33]

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,[34] "or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[35]

Tested against these considerations, the Court finds that the CA correctly granted respondents' *certiorari* petition before it, since the NLRC gravely abused its discretion in ruling that petitioner was a regular employee of MEC when the latter had established by substantial evidence that petitioner was merely a project employee. On the other hand, there is no evidence on record to substantiate petitioner's claim that he was employed as early as 1998. Article 294[36] of the Labor Code,[37] as amended, distinguishes a project-based employee from a regular employee as follows:

> 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

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33 See *Gadia v. Sykes Asia, Inc*., G.R. No. 209499, January 28, 2015.

34 Id.

35 RULES OF COURT, RULE 133, SECTION 5.

36 Formerly Article 280. As renumbered pursuant to Section 5 of Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES" (approved on June 21, 2011).

37 Presidential Decree No. 442 entitled "A DECREE INSTITUTING A LABOR CODE THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE" (approved on May 1, 1974).

> 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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> x x x x (Emphasis and underscoring supplied)

Thus, for an employee to be considered project-based, the employer must show that: (*a*) the employee was assigned to carry out a specific project or undertaking; and (*b*) the duration and scope of which were specified at the time the employee was engaged for such project.[38] Being assigned to a project or a phase thereof which begins and ends at determined or determinable times, the services of project employees may be lawfully terminated at the completion of such project or phase.[39] Consequently, in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent them from attaining regular status, employers claiming that their workers are project employees should prove that: (*a*) the duration and scope of the employment was specified at the time they were engaged; and (*b*) there was indeed a project.[40]

In this case, records reveal that petitioner was adequately informed of his employment status (as project employee) at the time of his engagement for the NECC and RCB-Malakas Projects. This is clearly substantiated by the latter's employment contracts[41] duly signed by him, explicitly stating that: (*a*) he was hired as a project employee; and (*b*) his employment was for the indicated starting dates therein "and will end on completion/phase of work of project."[42] To the Court's mind, said contracts sufficiently apprised petitioner that his security of tenure with MEC would only last as long as the specific project or a phase thereof to which he was assigned was subsisting. Hence, when the project or phase was completed, he was validly terminated from employment, his engagement being co-terminus only with such project or phase.

Further, pursuant to Department Order No. 19, or the "Guidelines Governing the Employment of Workers in the Construction Industry,"

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38 See *Gadia v. Sykes Asia, Inc*., supra note 33.

39 See *Omni Hauling Services, Inc. v. Bon*, G. R. No. 199388, September 3, 2014, 734 SCRA 270, 277-282. See also Section 1 (c), Rule XXIII (Termination of Employment), Book V of the Omnibus Rules Implementing the Labor Code [as amended by DOLE Department Order No. 9, Series of 1997], which govern termination of project employees states:

> Section 1. *Security of tenure.* — x x x .
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> x x x x
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> (c) In cases of project employment or employment covered by legitimate contracting or sub-contracting arrangements, no employee shall be dismissed ***prior*** to the completion of the project or phase thereof for which the employee was engaged, or prior to the expiration of the contract between the principal and contractor, unless the dismissal is for just or authorized cause subject to the requirements of due process or prior notice, or is brought about by the completion of the phase of the project or contract for which the employee was engaged.

40 See *Gadia v. Sykes Asia, Inc*., supra note 33, citing *Omni Hauling Services, Inc. v. Bon*, supra note 39.

41 Records, pp. 49 and 53.

42 Id.

respondent duly submitted the required Establishment Employment Reports[43] to the DOLE Makati/Pasay Field Office regarding the "permanent termination" of petitioner from both of the projects for which he was engaged (*i.e.*, the NECC and RCB-Malakas Projects). As aptly pointed out by the CA, such submission is an indication of project employment. In *Tomas Lao Construction v. NLRC*,[44] the Court elucidated:

> Moreover, if private respondents were indeed employed as "project employees," petitioners should have submitted a report of termination to the nearest public employment office every time their employment was terminated due to completion of each construction project. The records show that they did not. Policy Instruction No. 20 is explicit that employers of project employees are exempted from the clearance requirement but not from the submission of termination report. We have consistently held that failure of the employer to file termination reports after every project completion proves that the employees are not project employees. Nowhere in the New Labor Code is it provided that the reportorial requirement is dispensed with. **The fact is that Department Order No. 19 superseding Policy Instruction No. 20 expressly provides that the report of termination is one of the indicators of project employment.** (Emphasis supplied)

On the other hand, the records are bereft of any substantial evidence to support petitioner's claim that he had been continuously rehired by respondent as a mason for 22 years[45] as to accord him with a regular employment status. Petitioner proffered a bare and self-serving claim that he has been employed by respondent since 1998.[46] It is well-settled that a party alleging a critical fact must support his allegation with substantial evidence as allegation is not evidence.[47] Ultimately, nothing on record evinces the existence of an employer-employee relationship[48] between him and respondent prior to his employment as a project employee in the NECC Project.

At any rate, the repeated and successive rehiring of project employees does not, by and of itself, qualify them as regular employees. Case law states that length of service (through rehiring) is not the controlling determinant of the employment tenure, but whether the employment has been fixed for a specific project or undertaking, with its completion having been determined at the time of the engagement of the employee.[49] While generally, length of service provides a fair yardstick for determining when an employee initially

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43 Id. at 50-51 and 58-59.
44 344 Phil. 268, 282 (1997); citations omitted.
45 *Rollo*, p. 38.
46 Records, p. 28.
47 *Tan Brothers Corporation of Basilan City v. Escudero*, G.R. No. 188711, July 3, 2013, 700 SCRA 583, 593.
48 See *Caurdanetaan Piece Workers Union v. Laguesma*, 350 Phil. 35, 64 (1998).
49 *William Uy Construction Corp. v. Trinidad*, 629 Phil. 185, 190 (2010), citing *Caseres v. Universal Robina Sugar Milling Corp.* (*URSUMCO*), 560 Phil. 615, 623 (2007).

hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization, this standard will not be fair, if applied to the construction industry because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project as they have no control over the decisions and resources of project proponents or owners.[50] Thus, once the project is completed it would be unjust to require the employer to maintain these employees in their payroll since this would be tantamount to making the employee a privileged retainer who collects payment from his employer for work not done, and amounts to labor coddling at the expense of management.[51]

All told, since respondents have duly proven by substantial evidence that petitioner, although rehired, was engaged for specific projects, the duration and scope of which were specified at the times he was engaged, and that he was apprised of his status as a project employee at the onset, the NLRC gravely abused its discretion in ruling that petitioner was a regular employee. Therefore, the affirmance of the CA's ruling is in order.

WHEREFORE, the petition is **DENIED**. The Decision dated April 8, 2013 and the Resolution dated October 11, 2013 of the Court of Appeals in CA-G.R. SP No. 122928 are hereby **AFFIRMED**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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50 Id.

51 See *Malicdem v. Marulas Industrial Corporation*, G.R. No. 204406, February 26, 2014, 717 SCRA 563; *Archbuild Masters and Construction, Inc. v. NLRC*, 321 Phil. 869, 875-876 (1995).

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice