

THIRD DIVISION

[G.R. No. 185251, October 02, 2009]

**RAUL G. LOCSIN AND EDDIE B. TOMAQUIN, PETITIONERS, VS.
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 45 seeks the reversal of the May 6, 2008 Decision^[1] and November 4, 2008 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 97398, entitled *Philippine Long Distance Telephone Company v. National Labor Relations Commission, Raul G. Locsin and Eddie B. Tomaquin*. The assailed decision set aside the Resolutions of the National Labor Relations Commission (NLRC) dated October 28, 2005 and August 28, 2006 which in turn affirmed the Decision dated February 13, 2004 of the Labor Arbiter. The assailed resolution, on the other hand, denied petitioners' motion for reconsideration of the assailed decision.

The Facts

On November 1, 1990, respondent Philippine Long Distance Telephone Company (PLDT) and the Security and Safety Corporation of the Philippines (SSCP) entered into a Security Services Agreement^[3] (Agreement) whereby SSCP would provide armed security guards to PLDT to be assigned to its various offices.

Pursuant to such agreement, petitioners Raul Locsin and Eddie Tomaquin, among other security guards, were posted at a PLDT office.

On August 30, 2001, respondent issued a Letter dated August 30, 2001 terminating the Agreement effective October 1, 2001.^[4]

Despite the termination of the Agreement, however, petitioners continued to secure the premises of their assigned office. They were allegedly directed to remain at their post by representatives of respondent. In support of their contention, petitioners provided the Labor Arbiter with copies of petitioner Locsin's pay slips for the period of January to September 2002.^[5]

Then, on September 30, 2002, petitioners' services were terminated.

Thus, petitioners filed a complaint before the Labor Arbiter for illegal dismissal and recovery of money claims such as overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay, Emergency Cost of Living

Allowance, and moral and exemplary damages against PLDT.

The Labor Arbiter rendered a Decision finding PLDT liable for illegal dismissal. It was explained in the Decision that petitioners were found to be employees of PLDT and not of SSCP. Such conclusion was arrived at with the factual finding that petitioners continued to serve as guards of PLDT's offices. As such employees, petitioners were entitled to substantive and procedural due process before termination of employment. The Labor Arbiter held that respondent failed to observe such due process requirements. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Philippine Long Distance and Telephone Company (PLDT) to pay complainants Raul E. Locsin and Eddie Tomaquin their separation pay and back wages computed as follows:

NAME	SEPARATION PAY	BACKWAGES
1. Raul E. Locsin	P127,500.00	P240,954.67
2. Eddie B. Tomaquin	P127,500.00	<u>P240,954.67</u>
		P736,909.34

All other claims are DISMISSED for want of factual basis.

Let the computation made by the Computation and Examination Unit form part of this decision.

SO ORDERED.

PLDT appealed the above Decision to the NLRC which rendered a Resolution affirming *in toto* the Arbiter's Decision.

Thus, PLDT filed a Motion for Reconsideration of the NLRC's Resolution which was also denied.

Consequently, PLDT filed a Petition for Certiorari with the CA asking for the nullification of the Resolution issued by the NLRC as well as the Labor Arbiter's Decision. The CA rendered the assailed decision granting PLDT's petition and dismissing petitioners' complaint. The dispositive portion of the CA Decision provides:

WHEREFORE, the instant Petition for Certiorari is GRANTED. The Resolutions dated October 28, 2005 and August 28, 2006 of the National Labor Relations Commission are ANNULLED and SET ASIDE. Private respondents' complaint against Philippine Long Distance Telephone Company is DISMISSED.

SO ORDERED.

The CA applied the four-fold test in order to determine the existence of an employer-employee relationship between the parties but did not find such relationship. It determined that SSCP was not a labor-only contractor and was an independent contractor having substantial capital to operate and conduct its own business. The CA further bolstered its decision by citing the Agreement whereby it

was stipulated that there shall be no employer-employee relationship between the security guards and PLDT.

Anent the pay slips that were presented by petitioners, the CA noted that those were issued by SSCP and not PLDT; hence, SSCP continued to pay the salaries of petitioners after the Agreement. This fact allegedly proved that petitioners continued to be employees of SSCP albeit performing their work at PLDT's premises.

From such assailed decision, petitioners filed a motion for reconsideration which was denied in the assailed resolution.

Hence, we have this petition.

The Issues

1. Whether or not; complainants extended services to the respondent for one (1) year from October 1, 2001, the effectivity of the termination of the contract of complainants agency SSCP, up to September 30, 2002, without a renewed contract, constitutes an employer-employee relationship between respondent and the complainants.
2. Whether or not; in accordance to the provision of the Article 280 of the Labor Code, complainants extended services to the respondent for another one (1) year without a contract be considered as contractual employment.
3. Whether or not; in accordance to the provision of the Article 280 of the Labor Code, does complainants thirteen (13) years of service to the respondent with manifestation to the respondent thirteen (13) years renewal of its security contract with the complainant agency SSCP, can be considered only as "seasonal in nature" or fixed as [specific projects] or undertakings and its completion or termination can be dictated as [controlled] by the respondent anytime they wanted to.
4. Whether or not; complainants from being an alleged contractual employees of the respondent for thirteen (13) years as they were then covered by a contract, becomes regular employees of the respondent as the one (1) year extended services of the complainants were not covered by a contract, and can be considered as direct employment pursuant to the provision of the Article 280 of the Labor Code.
5. Whether or not; the Court of Appeals committed grave abuse of discretion when it set aside and [annulled] the labor [arbiter's] decision and of the NLRC's resolution declaring the dismissal of the complainant as illegal.^[6]

The Court's Ruling

This petition is hereby granted.

An Employer-Employee Relationship Existed Between the Parties

It is beyond cavil that there was no employer-employee relationship between the parties from the time of petitioners' first assignment to respondent by SSCP in 1988 until the alleged termination of the Agreement between respondent and SSCP. In fact, this was the conclusion that was reached by this Court in *Abella v. Philippine Long Distance Telephone Company*,^[7] where we ruled that petitioners therein, including herein petitioners, cannot be considered as employees of PLDT. It bears pointing out that petitioners were among those declared to be employees of their respective security agencies and not of PLDT.

The only issue in this case is whether petitioners became employees of respondent after the Agreement between SSCP and respondent was terminated.

This must be answered in the affirmative.

Notably, respondent does not deny the fact that petitioners remained in the premises of their offices even after the Agreement was terminated. And it is this fact that must be explained.

To recapitulate, the CA, in rendering a decision in favor of respondent, found that: (1) petitioners failed to prove that SSCP was a labor-only contractor; and (2) petitioners are employees of SSCP and not of PLDT.

In arriving at such conclusions, the CA relied on the provisions of the Agreement, wherein SSCP undertook to supply PLDT with the required security guards, while furnishing PLDT with a performance bond in the amount of PHP 707,000. Moreover, the CA gave weight to the provision in the Agreement that SSCP warranted that it "carry on an independent business and has substantial capital or investment in the form of equipment, work premises, and other materials which are necessary in the conduct of its business."

Further, in determining that no employer-employee relationship existed between the parties, the CA quoted the express provision of the Agreement, stating that no employer-employee relationship existed between the parties herein. The CA disregarded the pay slips of Locsin considering that they were in fact issued by SSCP and not by PLDT.

From the foregoing explanation of the CA, the fact remains that petitioners remained at their post after the termination of the Agreement. Notably, in its Comment dated March 10, 2009,^[8] respondent never denied that petitioners remained at their post until September 30, 2002. While respondent denies the alleged circumstances stated by petitioners, that they were told to remain at their post by respondent's Security Department and that they were informed by SSCP Operations Officer Eduardo Juliano that their salaries would be coursed through SSCP as per arrangement with PLDT, it does not state why they were not made to vacate their posts. Respondent said that it did not know why petitioners remained at