

SECOND DIVISION

[G.R. No. 204684, October 05, 2020]

ALLAN REGALA, PETITIONER, VS. MANILA HOTEL CORPORATION, RESPONDENT.

DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*^[1] assails the May 22, 2012 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 120748, which set aside the March 24, 2011 Decision^[3] and May 31, 2011 Resolution^[4] of the National Labor Relations Commission (NLRC) declaring herein petitioner Allan Regala (Regala) a regular employee of respondent Manila Hotel Corporation (MHC) who was constructively dismissed from employment. In a November 19, 2012 Resolution,^[5] the CA refused to reconsider its earlier Decision.

Antecedent Facts

This case stemmed from a complaint for constructive dismissal and regularization, non-payment of paternity leave pay, and claims for backwages filed by Regala against MHC, and Emilio Yap (Yap), Teresita Gabut (Gabut), and Marcelo Ele (Ele), President, Food and Beverage Manager, and Vice President for Legal, Personnel and Security Administration, respectively, of MHC.

Regala was hired by MHC sometime in February 2000^[6] as one of its waiters assigned to the Food and Beverage Department.^[7] He was later assigned as cook helper at MHC's Chocolate Room/Cookies Kitchen during the period from October 18, 2004 to June 26, 2006.^[8] In the course of his employment as waiter/cook helper, Regala worked for six (6) days every week,^[9] and was paid a daily salary of P382.00 until sometime in December 2009.^[10] MHC also remitted contributions in Regala's behalf to the Social Security System (SSS) and Philippine Health Insurance Corporation (PhilHealth).^[11]

As waiter, Regala's duties and responsibilities included preparing the *mise en place*, taking of orders, and serving food and beverages to hotel guests at tables and inside MHC's dining establishments. In the course of his engagement with MHC, Regala was directed to report to a Captain Waiter, and assigned to work for its Cowrie Grill, Pool Bar, Mini Bar, Kitchen Ginza, Tap Room, Champagne Room, Room Service, Mabuhay Palace, Banquet Services, and Pastry and House Keeping.^[12] From October 2008 to May 2009, Regala was made to attend and participate in hotel trainings for Basic Food Safety Strategies,^[13] Food Safety Awareness,^[14] and Customer Service Awareness.^[15]

Regala alleged that he was not recognized as a regular rank-and-file employee despite having rendered services to MHC for several years. Regala also claimed that MHC constructively dismissed him from employment when it allegedly reduced his regular work days to two (2) days from the normal five (5)-day work week starting December 2, 2009, which resulted in the diminution of his take home salary.^[16]

On its part, MHC denied outright that Regala is its regular employee, and claimed that he is a mere freelance or "extra waiter" engaged by MHC on a short term basis. It explained that it employs extra waiters at fixed and/or determinable periods particularly when there are temporary spikes in the volume of its business. It is during these specific periods when management is forced to supplement the hotel's regular staff of waiters with temporary fixed-term employees, such as Regala, in order to meet increases in business activities in its food and beverage functions, special events and banquets. In engaging extra or temporary waiters, MHC relies on loose referrals from its employees and on a list of waiters who have expressed interest in part-time or temporary engagements.^[17] It further explained that its system of hiring freelance waiters on an informal and temporary basis is a common practice in the hotel and restaurant industry and that it is through this industry practice that these extra waiters, including Regala, are able to offer their services to other hotels, restaurants, and food catering companies despite their existing engagement with MHC.^[18]

MHC then presented a sample fixed-term service contract,^[19] and copies of Regala's Department Outlet Services Contracts for Extra Waiters/Cocktail Attendants (Service Agreements)^[20] covering the periods of his supposed temporary engagement with MHC, or from March 1, 2010 to March 3, 2010. MHC contended that prior to engaging the services of extra waiters, applicant waiters, such as Regala, and MHC execute fixed-term service contracts and agree on a specific duration of engagement depending on the requirement of the hotel in a given period. The Service Agreements and the fixed-term service contracts similarly state the following terms, *to wit*:

This is to confirm your engagement to render Extra Waiter/Cocktail Attendant with Manila Hotel strictly under the following terms only:

DATE (Duration): _____

DEPARTMENT/OUTLET _____

TIME:

RATE PER HOUR: _____

FUNCTION (If applicable) _____

It is understood that the above rate is inclusive of emergency cost of living allowance and that this Service/Function Contract is only for the above-indicated outlet/department or function and which Terminates or Co-terminus with the completion of the function, work or services for which you have been engaged.

For all intents and purposes, you are not considered employees of the Company. You shall, however, abide and be bound by rules and regulations issued.

MANILA HOTEL

By:

Personnel Department^[21]

On this premise, MHC argued that there can be no illegal dismissal to speak of since the expiration of the period under Regala's Service Agreements simply caused the natural cessation of his fixed-term employment with MHC.^[22]

Ruling of the Labor Arbiter

On September 8, 2010, the Labor Arbiter promulgated a Decision^[23] dismissing the complaint for lack of merit, the dispositive portion of which states:

WHEREFORE, premises considered, judgement is hereby rendered DISMISSING the instant complaint for lack of merit.

SO ORDERED.^[24]

The LA held that Regala is a fixed-term employee of MHC and that he voluntarily executed the Service Agreements with MHC with a full understanding that his engagement with it was only for a fixed period. Meanwhile, Regala failed to present evidence which would prove that he was forced or coerced into executing the said Service Agreements, that his consent was vitiated by any unlawful means when he signed the same, or that MHC exerted moral dominance over him at the time he was engaged by it as a waiter for a fixed period.

On the issue of constructive dismissal, the LA held that Regala's claim of constructive dismissal must fail considering that he continued reporting for work at MHC at the time he instituted the instant complaint for illegal or constructive dismissal.

The LA also denied Regala's claims for payment of paternity leave pay and backwages and exonerated MHC, Yap, Gabut, and Ele from any liability.

Ruling of the National Labor Relations Commission

In his appeal^[25] to the NLRC, Regala averred that the LA erred in finding that he was a fixed-term employee of MHC and that he was not constructively dismissed from employment. Petitioner mainly contended that, using the four-fold test, he is a regular employee of MHC. Petitioner added that his duties and functions as a waiter are necessary and desirable to the food and beverage business of MHC, and that his continued employment since February 2000 is sufficient evidence of the necessity and indispensability of his services to its business. Petitioner further argued that MHC's practice of making him sign fixed-term service contracts from time to time is a scheme devised by it to preclude him from attaining regular employment status. Petitioner also claimed that MHC outsourced the services of a contractor which supplied the "extra waiters." This purportedly affected Regala's working hours.

Being a regular employee of MHC, Regala argued that MHC's act of unreasonably reducing his work days is tantamount to constructive dismissal.

In its March 24, 2011 Decision,^[26] the NLRC reversed the Decision of the LA and held that Regala is a regular employee of MHC.

In so ruling, the NLRC noted that MHC failed to furnish a copy of Regala's written contract executed at the time of his engagement on February 2000, which would show that he was engaged for a fixed period or duration. In the absence of a clear agreement or contract, the NLRC held that Regala enjoys the presumption of regular employment in his favor. The NLRC also emphasized that Regala's position as waiter required him to perform activities which are usually necessary and desirable to the usual trade and business of MHC.

Being a regular employee of MHC, the NLRC found that Regala was constructively dismissed from employment when MHC reduced his take-home pay as a consequence of the hotel's changes in his work schedule which reduced his work days from five (5) days a week to two (2) days a week. The NLRC thus ordered Regala's reinstatement to his former position without loss of seniority rights, and payment of full backwages computed from December 2, 2009 up to his actual reinstatement, less the amount of wages he actually received beginning December 2, 2009, and from March 1 to 3, 2010.

The dispositive of the Decision states, as follows:

WHEREFORE, the Labor Arbiter's Decision dated September 8, 2010 is hereby REVERSED and SET ASIDE. Respondent MHC Corporation is ordered to reinstate the complainant to his former position without loss of seniority rights and to pay his full backwages computed from December 2, 2009 up to his actual reinstatement, but deducting therefrom the wages he received for two (2) days a week beginning December 2, 2009 and his wages for March 1-3, 2010, and is tentatively computed up to March 30, 2011 in the amount of P170,618.54 x x x x

SO ORDERED.^[27]

MHC filed a Motion for Reconsideration^[28] which was, however, denied in the May 31, 2011 Resolution^[29] of the NLRC.

Ruling of the Court of Appeals

Aggrieved, MHC filed a Petition for *Certiorari*^[30] (with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) before the CA ascribing upon the NLRC grave abuse of discretion when it held that Regala is a regular employee of MHC and that he was constructively dismissed from employment.

MHC averred that its practice of hiring additional waiters on a fixed or short term contractual basis is a valid exercise of its management prerogative in order for it to meet client demands as a result of unforeseen spikes in the volume of its business.^[31] It further argued that the fact Regala was engaged to perform activities which are usually necessary or desirable to its business does not preclude the fixing of employment for a specified duration or period.^[32]

In his Comment/Opposition^[33] to respondents' Petition for *Certiorari*, Regala averred that his fixed-term contract of employment basically rendered his work at the pleasure of MHC which was intended to prevent security of tenure from accruing in his favor.^[34]

On May 22, 2012, the CA rendered its assailed Decision^[35] granting MHC's Petition for *Certiorari* and setting aside the March 24, 2011 Decision and May 31, 2011 Resolution of the NLRC. The dispositive portion of the May 22, 2012 Decision reads, as follows:

WHEREFORE, the instant petition is **GRANTED**. Setting aside NLRC's assailed Decision dated March 24, 2011, and Resolution dated May 31, 2011, the complaint below is dismissed for being devoid of merit.

SO ORDERED.^[36]

The CA concluded that Regala showed no proof that MHC forced or coerced him to execute his fixed-term employment contracts, nor did he establish that MHC was "engaged in hiring workers for work for such periods [which were] deliberately crafted to prevent the regularization of employees x x x x."^[37] As Regala validly entered into fixed-term employment agreements with MHC, his displacement each time the said fixed-term employment expired did not result in illegal dismissal.

Petitioner filed a Motion for Reconsideration^[38] but the CA denied the same in its November 19, 2012 Resolution.^[39] Hence, the instant Petition.

It is worth noting at this point that MHC filed before this Court its March 10, 2016 Motion for Leave of Court to File and Admit Attached Manifestation^[40] and the Manifestation^[41] on March 31, 2016. Annexed to the March 10, 2016 Manifestation were photocopies of Regala's Daily Time Records (DTR)^[42] covering the period from March 4, 2009 to March 4, 2016, and his Regular Payroll Journals (Payroll Journals)^[43] for the period from January 25, 2009 to February 25, 2016.

Issues

Regala raised the following issues for resolution:

THE HONORABLE [CA] ERRED IN DISMISSING THE CASE FOR REGULARIZATION AND CONSTRUCTIVE DISMISSAL FILED BY PETITIONER.

THE HONORABLE [CA] ERRED IN RESOLVING THAT PETITIONER IS A FIXED-TERM EMPLOYEE OF THE RESPONDENT [MHC].^[44]

It is undisputed that Regala is an employee of MHC. The crux of the controversy lies in petitioner's employment status.

Simply stated, the issues before this Court are the following: 1) whether Regala is a regular employee of MHC; and 2) whether he was constructively dismissed from employment.

Our Ruling

The Court grants the Petition.

Preliminary Matters

The belated submission of additional documentary