

SECOND DIVISION

[G.R. No. 207613, January 31, 2018]

REYMAN G. MINSOLA, PETITIONER, VS. NEW CITY BUILDERS, INC. AND ENGR. ERNEL FAJARDO, RESPONDENTS.

DECISION

REYES, JR., J:

In labor cases, the courts are tasked with the delicate act of balancing the employee's right to security of tenure vis-à-vis the employer's right to freely exercise its management prerogatives. To preserve this harmony, the court recognizes the right of an employer to hire project employees, subject to the correlative obligation of sufficiently apprising the latter of the nature and terms of their employment, and paying them the wages and monetary benefits that they are lawfully entitled to.

This treats of the Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision^[2] dated December 21, 2012, and Resolution^[3] dated June 11, 2013, issued by the Court of Appeals (CA) in CA-G.R. SP No. 121129, which dismissed petitioner Reyman G. Minsola's (Minsola) complaint for illegal dismissal.

The Antecedents

New City Builders, Inc. (New City) is a corporation duly organized under the laws of the Philippines engaged in the construction business, specializing in structural and design works.^[4]

On December 16, 2008, New City hired Minsola as a laborer for the structural phase of its Avida Tower 3 Project (Avida 3).^[5] Minsola was given a salary of Two Hundred Sixty Pesos (Php 260.00) per day.^[6] The employment contract stated that the duration of Minsola's employment will last until the completion of the structural phase.^[7]

Subsequently, on August 24, 2009, the structural phase of the Avida 3 was completed.^[8] Thus, Minsola received a notice of termination, which stated that his employment shall be effectively terminated at the end of working hours at 5:00 p.m. on even date.

On August 25, 2009, New City re-hired Minsola as a mason for the architectural phase of the Avida 3.^[9]

Meanwhile, sometime in December 2009, upon reviewing Minsola's employment

record, New City noticed that Minsola had no appointment paper as a mason for the architectural phase. Consequently, New City instructed Minsola to update his employment record. However, the latter ignored New City's instructions, and continued to work without an appointment paper.

On January 20, 2010, Minsola was again summoned to the office of New City to sign his appointment paper. Minsola adamantly refused to comply with the directive. He stormed out of the office, and never reported back for work.^[10]

On January 26, 2010, Minsola filed a Complaint for Illegal Dismissal, Underpayment of Salary, Non-Payment of 13th Month Pay, Separation Pay and Refund of Cash Bond.^[11] In his position paper,^[12] Minsola claimed that he was a regular employee of New City as he rendered work for more than one year and that his work as a laborer/mason is necessary and desirable to the former's business. He claimed that he was constructively dismissed by New City.

Ruling of the Labor Arbiter

On October 8, 2010, the Labor Arbiter (LA) rendered a Decision^[13] dismissing the complaint for illegal dismissal. The LA found that Minsola was a project employee who was hired for specific projects by New City. The fact that Minsola worked for more than one year did not convert his employment status to regular. The LA stressed that the second paragraph of Article 280, which refers to the regularization of an employee who renders service for more than one year, pertains to casual employees.^[14] Likewise, the LA opined that Minsola was not terminated from work. The LA noted that the records are bereft of any proof or evidence showing that Minsola was actually terminated from work. Rather, it was actually Minsola who suddenly stopped reporting after he was instructed to sign and update his employment record.^[15] Thus, the LA ordered Minsola's reinstatement until the completion of the project.^[16]

Anent Minsola's monetary claims, the LA awarded Two Thousand Six Hundred Fifty-Two Pesos (Php 2,652.00), as 13th month pay differential. The dispositive portion of the LA decision reads:

WHEREFORE, premises considered, the complaint for illegal dismissal is DISMISSED for lack of merit. However, respondent NEW CITY BUILDERS, INC. is ordered to pay complainant his 13th month pay differentials in the amount of Php 2,652.00.

All other claims are dismissed for want of merit.

SO ORDERED.^[17]

Aggrieved, Minsola filed an appeal^[18] before the National Labor Relations

Commission (NLRC).

Ruling of the NLRC

On April 29, 2011, the NLRC rendered a Decision^[19] reversing the LA's ruling. The NLRC found that Minsola was a regular employee and was constructively dismissed when he was made to sign a project employment contract.^[20] Citing the case of *Viernes v. NLRC*,^[21] the NLRC concluded that Minsola became a regular employee when his services were continued beyond the original term of his project employment, without the benefit of a new contract fixing the duration of his employment. Likewise, the NLRC noted that Minsola's job as a laborer/mason was necessary and desirable to the usual business of New City.^[22] Consequently, the NLRC ordered New City to reinstate Minsola and pay him full backwages from January 20, 2010, until his actual reinstatement.^[23]

As for Minsola's monetary claims, the NLRC awarded the former his salary differentials, service incentive leave pay differentials and holiday pay.^[24] The NLRC observed that the prevailing minimum wage rate at the time of Minsola's employment was Three Hundred Eighty-Two Pesos (Php 382.00) per day. This notwithstanding, Minsola merely received a wage of Php 260.00 per day. Hence, the NLRC awarded a salary differential of Forty-One Thousand Six Hundred Sixteen Pesos and Sixty-Four Centavos (Php 41,616.64), and a Service Incentive Leave Pay differential of Three Hundred Ten Pesos (Php 310.00).^[25] In addition, the NLRC ordered the imposition of ten percent (10%) attorney's fees to the total monetary award.^[26] The dispositive portion of the NLRC decision reads:

WHEREFORE, the [LA's] Decision dated October 8, 2010 is hereby MODIFIED. In addition to the award of 13th month pay differential, [New City] is ordered to reinstate [Minsola] without loss of seniority rights and to pay him backwages (computed from January 20, 2010 up to the date of this decision), and Salary Differential (from December 16, 2008 up to January 19, 2010), Salary Incentive Leave Pay Differential, and 10% attorney's fee, to be computed by the Computation Unit (Commission), which computation shall be attached to and become part of this decision.

SO ORDERED.^[27]

Dissatisfied with the ruling, New City filed a Motion for Reconsideration, which was denied by the NLRC in its Resolution^[28] dated June 24, 2011.

Accordingly, New City filed a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court with the CA.

Ruling of the CA

On December 21, 2012, the CA reversed^[29] the NLRC's decision. The CA ruled that Minsola was a project employee. The CA reasoned that Minsola was hired for specific phases in the Avida 3. He was originally hired as a laborer for the structural phase of the Avida 3. Upon the completion of the structural phase, he was re-hired in a different capacity, as a mason for the architectural phase of the Avida 3 construction. The CA observed that Minsola's tenure as a laborer was covered by an employment contract, which clearly provided that he was hired to work for a certain phase in the construction of the Avida 3, and that his term of employment will not extend beyond the completion of the same project. Likewise, the CA observed that the records are bereft of any proof showing that Minsola was constructively dismissed by New City.

Regarding the monetary awards, the CA reinstated the LA's ruling, thereby ordering the payment of Php 2,652.00, as 13th month pay differential. The dispositive portion of the assailed CA decision reads:

WHEREFORE, the petition is GRANTED. The decision of the [NLRC] dated April 29, 2011 and its subsequent resolution dated June 24, 2011 are hereby ANNULLED and SET ASIDE. The decision of the [LA] is REINSTATED.

SO ORDERED.^[30]

Aggrieved, Minsola filed a Motion for Reconsideration, which was denied by the CA in its Resolution^[31] dated June 11, 2013.

Undeterred, Minsola filed the instant Petition for Review on *Certiorari*^[32] under Rule 45 of the Revised Rules of Court, seeking the reversal of the assailed CA decision and resolution.

The Issues

The instant legal conundrum rests on the following issues, to wit: (i) whether or not Minsola was a project employee; (ii) whether or not Minsola was constructively dismissed by New City; and (iii) whether or not Minsola is entitled to his monetary claims consisting of his salary differential, service incentive leave pay differential, holiday pay and 10% attorney's fees.^[33]

Minsola claims that he is a regular employee as his work as a laborer/mason was necessary and desirable to New City's construction business. Added to this, Minsola points out that he worked for New City for more than one year, more particularly, for 13 months, thereby automatically bestowing upon him regular employment status. Although he was initially hired as a laborer, his employment in Avida 3 continued when he was re-hired as a mason, without the execution of another contract fixing the term of his employment. Minsola further asserts that New City's act of forcing him to sign an employment contract is a scheme to preclude him from acquiring permanent employment status.

In addition, Minsola prays for the payment of his salary differentials, 13th month pay differential, service incentive leave pay differential, holiday pay and attorney's fees. He asserts that he received a meager daily wage of Php 260.00, which was far below the prevailing minimum wage rate of Php 382.00 per day. As such, he is entitled to receive differentials for his salary, 13th month pay and service incentive leave pay. Moreover, Minsola claims that New City failed to present proof showing that he was given his holiday pay. Lastly, Minsola asserts that he is entitled to an award of attorney's fees, as he was forced to litigate and defend his rights against his illegal dismissal and the unlawful withholding of his wages.

On the other hand, New City counters that Minsola was hired as a project employee to work for the structural phase, and thereafter, the architectural phase of the Avida 3. His work as a laborer was completely different from his tasks as a mason.^[34] In this regard, his subsequent re-hiring cannot be construed as a continuation of his former employment. Furthermore, the simple fact that his employment has gone beyond one year does not automatically convert his employment status. Finally, New City maintains that Minsola failed to present any proof to substantiate his claim of illegal dismissal. It did not dismiss Minsola, nor did it prevent the latter from reporting for work.^[35]

Ruling of the Court

The petition is partly impressed with merit.

As a general rule, the Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced before the lower tribunals. However, this rule allows for exceptions. One of these is when the findings of fact of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the CA. When there is a variance in the factual findings, it is incumbent upon the Court to re-examine the facts once again.^[36]

Minsola is a Project Employee of New City

Essentially, the Labor Code classifies four (4) kinds of employees, namely: (i) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (ii) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the employees' engagement; (c) seasonal employees or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (d) casual employees or those who are not regular, project, or seasonal employees. Jurisprudence has added a fifth kind — fixed-term employees or those hired only for a definite period of time.^[37]

Focusing on the first two kinds of employment, Article 294 of the Labor Code, as amended, distinguishes regular from project-based employment as follows: