804 Phil. 492

FIRST DIVISION

[G.R. No. 206390, January 30, 2017]

JACK C. VALENCIA, PETITIONER, VS. CLASSIQUE VINYL PRODUCTS CORPORATION, JOHNNY CHANG (OWNER) AND/OR CANTINGAS MANPOWER SERVICES, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

This Petition for Review on *Certiorari* assails the December 5, 2012 Decision[1] and March 18, 2013 Resolution[2] of the Court of Appeals (CA) in CA G.R. SP No. 120999, which respectively denied the Petition for *Certiorari* filed therewith by petitioner Jack C. Valencia (Valencia) and the motion for reconsideration thereto.

Factual Antecedents

On March 24, 2010, Valencia filed with the Labor Arbiter a Complaint[3] for Underpayment of Salary and Overtime Pay; Non-Payment of Holiday Pay, Service Incentive Leave Pay, 13th Month Pay; Regularization; Moral and Exemplary Damages; and, Attorney's Fees against respondents Classique Vinyl Products Corporation (Classique Vinyl) and its owner Johnny Chang (Chang) and/or respondent Cantingas Manpower Services (CMS). When Valencia, however, asked permission from Chang to attend the hearing in connection with the said complaint on April 17, 2010, the latter allegedly scolded him and told him not to report for work anymore. Hence, Valencia amended his complaint to include illegal dismissal.[4]

In his *Sinumpaang Salaysay*,[5] Valencia alleged that he applied for work with Classique Vinyl but was told by the latter's personnel office to proceed to CMS, a local manpower agency, and therein submit the requirements for employment. Upon submission thereof, CMS made him sign a contract of employment[6] but no copy of the same was given to him. He then proceeded to Classique Vinyl for interview and thereafter started working for the company in June 2005 as felitizer operator. Valencia claimed that he worked 12 hours a day from Monday to Saturday and was receiving P187.52 for the first eight hours and an overtime pay of P117.20 for the next four hours or beyond the then minimum wage mandated by law. Five months later, he was made to serve as extruder operator but without the corresponding increase in salary. He was neither paid his holiday pay, service incentive leave pay, and 13th month pay. Worse, premiums for Philhealth and Pag-IBIG Fund were not paid and his monthly deductions for Social Security System (SSS) premiums were not properly remitted. He was also being deducted the amounts of P100.00 and 60.00 a week for Cash Bond and Agency Fee, respectively. Valencia averred that his salary was paid on a weekly basis but his pay slips neither bore the name of Classique Vinyl nor of CMS; that all the machineries that he was using/operating in

connection with his work were all owned by Classique Vinyl; and, that his work was regularly supervised by Classique Vinyl. He further averred that he worked for Classique Vinyl for four years until his dismissal. Hence, by operation of law, he had already attained the status of a regular employee of his true employer, Classique Vinyl, since according to him, Civ1S is a mere labor only contractor. Valencia, therefore, argued that Classique Vinyl should be held guilty of illegal dismissal for failing to comply with the twin-notice requirement when it dismissed him from the service and be made to pay for his monetary claims.

Classique Vinyl, for its part, denied having hired Valencia and instead pointed to CMS as the one who actually selected, engaged, and contracted out Valencia's services. It averred that CMS would only deploy Valencia to Classique Vinyl whenever there was an urgent specific task or temporary work and these occasions took place sometime in the years 2005, 2007, 2009 and 2010. It stressed that Valencia's deployment to Classique Vinyl was intermittent and limited to three to four months only in each specific year. Classique Vinyl further contended that Valencia's performance was exclusively and directly supervised by CMS and that his wages and other benefits were also paid by the said agency. It likewise denied dismissing Valencia from work and instead averred that on April 16, 2010, while deployed with Classique Vinyl, Valencia went on a prolonged absence from work for reasons only known to him. In sum, Classique Vinyl asserted that there was no employer-employee relationship between it and Valencia, hence, it could not have illegally dismissed the latter nor can it be held liable for Valencia's monetary claims. Even assuming that Valencia is entitled to monetary benefits, Classique Vinyl averred that it cannot be made to pay the same since it is an establishment regularly employing less than 10 workers. As such, it is exempted from paying the prescribed wage orders in its area and other benefits under the Labor Code. At any rate, Classique Vinyl insisted that Valencia's true employer was CMS, the latter being an independent contractor as shown by the fact that it was duly incorporated and registered not only with the Securities and Exchange Commission but also with the Department of Labor and Employment; and, that it has substantial capital or investment in connection with the work performed and services rendered by its employees to clients.

CMS, on the other hand, denied any employer-employee relationship between it and Valencia. It contended that after it deployed Valencia to Classique Vinyl, it was already the latter which exercised full control and supervision over him. Also, Valencia's wages were paid by Classique Vinyl only that it was CMS which physically handed the same to Valencia.

Ruling of the Labor Arbiter

On September 13, 2010, the Labor Arbiter issued a Decision,[7] the pertinent portions of which read:

> Is [Valencia] a regular employee of respondent [Classique Vinyl]?
>
> The Certificate of Business Name Registration issued by the Department of Trade and Industry dated 17 August 2007 and the Renewal of PRPA License No. M-08-03-269 for the period 29 August 2008 to 28 August 2010 issued by the Regional Director of the National Capital Region of the Department of Labor and Employment [on the] 1st day of September

2008 are pieces of evidence to prove that respondent [CMS] is a legitimate Private Recruitment and Placement Agency.

Pursuant to its business objective, respondent CMS entered into several Employment Contracts with complainant Valencia as Contractual Employee for deployment to respondent [Classique Vinyl], the last of which was signed by [Valencia] on 06 February 2010.

The foregoing Employment Contract for a definite period supports respondent [Classique Vinyl's] assertion that [Valencia] was not hired continuously but intermittently ranging from 3 months to 4 months for the years 2005, 2007, 2009 and 2010. Notably, no controverting evidence was offered to dispute respondent [Classiquc Vinyl's] assertion.

Obviously, [Valencia] was deployed by CMS to [Classique Vinyl] for a fixed period.

In Pangilinan v. General Milling Corporation, G.R. No. 149329, July 12, 2004, the Supreme Court ruled that it does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities. There is thus nothing essentially contradictory between a definite period of employment and the nature of the employee's duties.

Thus, even if respondent [Classique Vinyl] exercises full control and supervision over the activities performed by [Valencia], the latter's employment cannot be considered as regular.

Likewise, even if [Valencia] is considered the regular employee of respondent CMS, the complaint for illegal dismissal cannot prosper as [the] employment was not terminated by respondent CMS.

On the other hand, there is no substantial evidence to support [Valencia's] view that he was actually dismissed from his employment by respondent [Classique Vinyl]. After all, it is elementary that he who makes an affirmative allegation has the burden of proof. On this score, [Valencia] failed to establish that he was actually dismissed from his job by respondent [Classique Vinyl], aside from his bare allegation.

With regard to underpayment of salary, respondent CMS admitted that it received from respondent [Classique Vinyl] the salary for [Valencia's] deployment. Respondent CMS never contested that the amount received was sufficient for the payment of [Valencia's] salary.

Furthermore, respondent [Classique Vinyl] cannot be obliged to pay [Valencia's] overtime pay, holiday pay, service incentive leave and 13th month pay as well as the alleged illegal deduction on the following grounds:

a) [Valencia] is not a rank-and-file employee of [Classique Vinyl];

b) No proof was offered to establish that [Valencia] actually rendered overtime services;

c) [Valencia had] not [worked] continuously or even intermittently for [one whole] (1) year[-]period during the specific year of his deployment with respondent [Classique Vinyl] to be entitled to service incentive leave pay.

d) [Valencia] failed to offer substantia1 evidence to prove that respondent [Classique Vinyl] illegally deducted fiom his salary the alleged agency and cash bond.

Moreover, as against respondent CMS[,] the record is bereft of factual basis for the exact computation of [Valencia's] money claims as it has remained uncontroverted that [Valencia] was not deployed continuously neither with respondent [Classique Vinyl] and/or to such other clientele.

WHEREFORE, premises considered, judgment is hereby rendered [d]ismissing the above-entitled case fur lack of merit and/or factual basis.

SO ORDERED.[8]

Ruling of the National Labor Relations Commission

Valencia promptly appealed to the National Labor Relations Commission (NLRC). Applying the four-fold test, the NLRC, however, declared CMS as Valencia's employer in its Resolution[9] dated April 14, 2011, *viz*.:

In Order to determine the existence of an employer-employee relationship, the following yardstick had been consistently applied: (1) the selection and engagement; (2) payment of wages; (3) power of dismissal and; (4) the power to control the employee[']s conduct.

In this case, [Valencia] admitted that he applied for work with respondent [CMS] x x x. Upon the acceptance of his application, he was made to sign an employment contract x x x. [Valencia] also admitted that he received his wages from respondent [CMS] x x x. As a matter of tact, respondent [CMS] argued that [Valencia] was given a non-cash wage in the approximate amount of Php3,000.00 x x x.

Notably, it is explicitly stated in the employment contract of [Valencia] that he is required to observe all the rules and regulations of the company as well as [the] lawful instructions of the management during his employment. That failure to do so would cause the termination of his employment contract. The pertinent provision of the contract reads:

> *2. The employee shall observe all the rules and regulations of the company during the period of employment and [the] lawful instructions of the management or its representatives. Failure to do so or if performance is below company*

> *standards, management [has] the right to immediately cancel this contract.* x x x

The fact that [Valencia] was subjected to such restriction is an evident exercise of the power of control over [Valencia].

The power of control of respondent [CMS] over Valencia was further bolstered by the declaration of the former that they will not take against [Valencia] his numerous tardiness and absences at work and[;] his non-observance of the company rules. The statement of [CMS] reads:

> *Needless to say that [Valencia] in the course of his employment has incurred many infractions like tardiness and absences, non-observance of company rules, but respondent [CMS], in reiteration will not take this up as leverage against [Valencia].* x x x

Though [Valencia] worked in the premises of Classique Vinyl x x x and that the [equipment] he used in the performance of his work was provided by the latter, the same is not sufficient to establish employer-employee relationship between [Valencia] and Classique Vinyl x x x in view of the foregoing circumstances earlier reflected. Besides, as articulated by jurisprudence, the power of control does not require actual exercise of the power but the power to wield that power x x x.

With the foregoing chain of events, it is evident that [Valencia] is an employee of respondent [CMS].

x x x x[10]

Accordingly, the NLRC held that there is no basis for Valencia to hold Classique Vinyl liable for his alleged illegal dismissal as well as for his money claims. Hence, the NLRC dismissed Valencia's appeal and affirmed the decision of the Labor Arbiter.

Valencia's motion for reconsideration thereto was likewise denied for lack of merit in the Resolution[11] dated June 8, 2011.

Ruling of the Court of Appeals

When Valencia sought recourse from the CA, the said court rendered a Decision[12] dated December 5, 2012 denying his Petition for *Certiorari* and affirming the ruling of the NLRC.

Valencia's motion for reconsideration was likewise denied in a Resolution[13] dated March 18, 2013.

Hence, this Petition tor Review on *Certiorari* imputing upon the CA the following errors:

> WITH DUE RESPECT, IT IS A SERIOUS ERROR WHICH CONSITITUTE[S] GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION ON THE PART OF THE HONORABLE COURT OF APPEALS