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FIRST DIVISION

[G.R. No. 184262**, April 24, 2017]

UNIVERSITY OF SANTO TOMAS (UST), PETITIONER, VS. SAMAHANG MANGGAGAWA NG UST, FERNANDO PONTESOR,* RODRIGO CLACER, SANTIAGO BUISA, JR., AND JIMMY NAZARETH, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 12, 2008 and the Resolution[3] dated August 22, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 85464, which reversed and set aside the Resolutions dated March 26, 2004[4] and May 25, 2004[5] of the National Labor Relations Commission (NLRC) in NLRC NCR CASE NO. 00-08-08586-99 (NLRC CA No. 035509-03) and, accordingly, reinstated the Decision[6] dated October 23, 2002 of the Labor Arbiter (LA) in NLRC-NCR-0-08-08586-99 declaring respondents Fernando Pontesor (Pontesor), Rodrigo Clacer (Clacer), Santiago Buisa, Jr. (Buisa), and Jimmy Nazareth (Nazareth; Pontesor, *et al.*, collectively) as regular employees of petitioner University of Santo Tomas (petitioner) and, thus, were illegally dismissed by the latter.

The Facts

The instant case stemmed from a complaint[7] for regularization and illegal dismissal filed by respondents Samahang Manggagawa ng UST and Pontesor, *et al.* (respondents) against petitioner before the NLRC. Respondents alleged that on various periods spanning the years 1990-1999, petitioner repeatedly hired Pontesor, *et al.* to perform various maintenance duties within its campus, *i.e.*, as laborer, mason, tinsmith, painter, electrician, welder, carpenter. Essentially, respondents insisted that in view of Pontesor, *et al.*'s performance of such maintenance tasks throughout the years, they should be deemed regular employees of petitioner. Respondents further argued that for as long as petitioner continues to operate and exist as an educational institution, with rooms, buildings, and facilities to maintain, the latter could not dispense with Pontesor, *et al.*'s services which are necessary and desirable to the business of petitioner.[8]

On the other hand, while petitioner admitted that it repeatedly hired Pontesor, *et al.* in different capacities throughout the aforesaid years, it nevertheless maintained that they were merely hired on a per-project basis, as evidenced by numerous Contractual Employee Appointments (CEAs)[9] signed by them. In this regard, petitioner pointed out that each of the CEAs that Pontesor, *et al.* signed defined the nature and term of the project to

which they are assigned, and that each contract was renewable in the event the project remained unfinished upon the expiration of the specified term. In accordance with the express provisions of said CEAs, Pontesor, *et al.*'s project employment were automatically terminated: (*a*) upon the expiration of the specific term specified in the CEA; (*b*) when the project is completed ahead of such expiration; or (*c*) in cases when their employment was extended due to the non-completion of the specific project for which they were hired, upon the completion of the said project. As such, the termination of Pontesor, *et al.*'s employment with petitioner was validly made due to the completion of the specific projects for which they were hired.[10]

The LA Ruling

In a Decision[11] dated October 23, 2002, the LA ruled in Pontesor, *et al.*'s favor and, accordingly, ordered petitioner to reinstate them to their former jobs with full backwages and without loss of seniority rights.[12] The LA found that Pontesor, *et al.* should be deemed as petitioner's regular employees, considering that: (*a*) they have rendered at least one (1) year of service to petitioner as its employees; (*b*) the activities for which they were hired for are vital or inherently indispensable to the maintenance of the buildings or classrooms where petitioner's classes were held; and (*c*) their CEAs were contrived to preclude them from obtaining security of tenure. In this light and in the absence of any valid cause for termination, the LA concluded that Pontesor, *et al.* were illegally dismissed by petitioner.[13]

Aggrieved, petitioner appealed[14] to the NLRC.

The NLRC Ruling

In a Resolution[15] dated March 26, 2004, the NLRC vacated the LA ruling and, consequently, entered a new one dismissing respondents' complaint for lack of merit.[16] Contrary to the LA's findings, the NLRC found that Pontesor, *et al*. cannot be considered regular employees as they knowingly and voluntarily entered into fixed term contracts of employment with petitioner. As such, they could not have been illegally dismissed upon the expiration of their respective last valid and binding fixed term employment contracts with petitioner. This notwithstanding, the NLRC rejected petitioner's contention that Pontesor, *et al.* should be deemed project employees, ratiocinating that their work were not usually necessary and desirable to petitioner's main business or trade, which is to provide elementary, secondary, tertiary, and post-graduate education. As such, the NLRC classified Pontesor, *et al.* as mere fixed term casual employees.[17]

Respondents moved for reconsideration,[18] which was, however, denied in a Resolution[19] dated May 25, 2004. Dissatisfied, they filed a petition[20] for *certiorari* before the CA.

The CA Ruling

In a Decision[21] dated June 12, 2008, the CA reversed and set aside the NLRC ruling and, accordingly, reinstated that of the LA.[22] It held that Pontesor, *et al.* cannot be considered as merely fixed term or project employees, considering that:

(*a*) they performed work that is necessary and desirable to petitioner's business, as evidenced by their repeated rehiring and petitioner's continuous need for their services; and (*b*) the specific undertaking or project for which they were employed were not clear as the project description set forth in their respective CEAs were either too general or too broad. Thus, the CA classified Pontesor, *et al.* as regular employees, who are entitled to security of tenure and cannot be terminated without any just or authorized cause.[23]

Undaunted, petitioner moved for reconsideration,[24] but the same was denied in a Resolution[25] dated August 22, 2008; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that Pontesor, *et al.* are regular employees and, consequently, were illegally dismissed by petitioner.

The Court's Ruling

The petition is without merit.

"Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."[26]

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being 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.[27]

"In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."[28]

Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC, as its finding that Pontesor, *et al.* are not regular employees of petitioner patently deviates from the evidence on record as well as settled legal principles of labor law.

Article 295[29] of the Labor Code,[30] as amended, distinguishes project employment from regular employment as follows:

> Art. 295 [280]. *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 where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Under the foregoing provision, the law provides for two (2) types of regular employees, namely: (*a*) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (*b*) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed (second category).[31] In *Universal Robina Corporation v. Catapang*,[32] citing *Abasolo v. NLRC*,[33] the Court laid down the test in determining whether one is a regular employee, to wit:

> The primary standard, therefore, of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of work performed and its relation to the scheme of the particular business or trade in its entirety. **Also, if the employee has been performing the job for at least a year, even if the performance is not continuous and merely intermittent, the law deems repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is considered regular, but only with respect to such activity and while such activity exists.**[34] (Emphasis and underscoring supplied.

In *Kimberly Independent Labor Union for Solidarity, Activism, and Nationalism - Organized Labor Ass'n. in Line Industries and Agriculture (KJLUSAN-OLALIA) v. Drilon (Kimberly)*,[35] the company was engaged in the manufacture of paper products, while the questioned employees occupied the positions of mechanics, electricians, machinists, machine shop helpers, warehouse helpers, painters, carpenters, pipefitters and masons. In that case, the Court held that since they have worked for the company for more than one (1) year, they should belong to the second category of regular employees by operation of law.