792 Phil. 422

SECOND DIVISION

[G.R. No. 206936, August 03, 2016]

PICOP RESOURCES, INC., PETITIONER VS. SOCIAL SECURITY COMMISSION AND MATEO A. BELIZAR, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*[1] assails the October 31, 2012 Decision[2] of the Court of Appeals (CA) dismissing the Petition for Review[3] in CA-G.R. SP No. 110724, and the CA's April 24, 2013 Resolution[4] denying petitioner's Motion for Reconsideration[5] of the herein assailed Decision.

Factual Antecedents

On October 28, 2004, herein respondent Mateo A. Belizar (Belizar) filed SSC Case No. 11-15788-04 before the Social Security Commission (SSC), his corespondent in this Petition, to establish his actual period of employment with herein petitioner PICOP Resources, Inc.[6] and compel the latter to remit unpaid Social Security System (SSS) premium contributions, in order that he may collect his SSS retirement benefits.[7]

The SSS intervened in the case, and, after proceedings in due course were taken, the SSC issued its February 4, 2009 Resolution[8] containing the following pronouncement:

> Upon due consideration of all the evidence on record, this Commission is thoroughly convinced that the petitioner was continuously employed as a preventive maintenance mechanic by respondent Bislig Bay Lumber Co., Inc/PICOP from 1966 to 1978. This finding is moored primarily on the positive and straightforward testimonies of the petitioner's witnesses, namely: Ramon A. Osaraga, and his brother, Anastacio Belizar, who, being co-employees of the petitioner within the same department of the respondent company, testified on the basis of their personal knowledge that the petitioner was, indeed, continuously employed by the respondent company during the said period. The sworn declarations of Felix V. Romero in the Joint Affidavit dated August 23, 2002 and that of Manuel M. Mijares in his Affidavit dated December 1, 2005, moreover, gave added evidentiary weight in establishing the petitioner's actual period of employment.
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> Based on the admission of the respondent in its Answer, the petitioner appears in its records to have been first employed in November 1966. Culled also from the certificate of employment dated September 14, 1977

issued by the respondent, the petitioner was paid a daily rate of P7.00 from November 3, 1966 until June 15, 1968. While there is testimonial evidence to prove that the petitioner worked with the respondent until 1978, it cannot be determined exactly when his employment ceased in that year, as well as the amount of his monthly compensation from July 1968 onwards. Hence, this Commission deems it appropriate to hold that the petitioner worked with the respondent from November 1966 until December 1978 and was paid the legal minimum wage then prevailing.

Despite the petitioner's claim that he was employed by the respondent starting 1965, there is no sufficient evidence to warrant such a finding as both the testimonial and documentary evidence on record preponderates as to show that he was first employed by the respondent only in November 1966, which, incidentally, is also the date he was reported to the SSS for coverage by the respondent. It was only the petitioner's brother, Anastacio Belizar, who claimed that the former was already working at PICOP when he was first hired in the last quarter of 1965. The rest of the petitioner's witnesses have no personal knowledge if he, indeed, worked with the respondent in 1965.

The respondent's bare contention that the petitioner was merely employed as a "casual Mechanic Helper" and/or "Casual Mechanic I", whose employment contract was periodically renewed, is belied by the overwhelming evidence as to the actual nature and duration of his employment in the respondent which it failed to refute.

It is paramount to clarify that not all casual employment are exempt from SS coverage. Section 8 (j) 3 of R.A. No. 1161, as amended, only exempts from SS coverage employment which is purely casual in nature and not for the purpose of the occupation or business of the employer. It is also settled that the determination of whether employment is casual or regular does not depend on the will or word of the employer, and the procedure of hiring but the nature of the activities performed by the employee, and to some extent, the length of performance and its continued existence x x x. And the primary standard of determining regular employment is the reasonable connection between the particular activities 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. x x x.

Thus, in the petitioner's case, his work as a Preventive Maintenance Mechanic from 1966 to 1978 at the mechanical and electrical section and/or light and heavy equipment department of the respondent company, which to date is engaged in the industry of paper production on a mammoth scale, is both necessary and desirable in the latter's usual trade or business. Despite the designation by the respondent of the petitioner's position in the certifications of employment that it issued as a mere "casual Mechanic Helper" and/or Casual Mechanic I, the repeated and continuous need for his services constitutes evidence of the necessity and indispensability of his services to the respondent and on the basis of the aforementioned legal authorities, his employment is regarded as

regular.

Considering that the respondent only remitted 22 monthly SS contributions for and in behalf of the petitioner despite his continuous employment from November 1966 to December 1978, the respondent is liable to pay the unremitted SS contributions corresponding to the said period, as well as the 3% per month penalty imposed thereon for late payment until fully paid, pursuant to Section 22(a) of R.A. No. 8282 or the Social Security Act of 1997. Moreover, since the petitioner has reached the retirement age of sixty (60) on October 9, 2001, it appearing in his SSS records that he was born on October 9, 1941, the respondent is also liable to pay damages pursuant to Section 24(b) of the same law for failure to remit any contribution due prior to the date of contingency resulting into the reduction of benefits equivalent to the difference between the amount of benefit to which the employee member or his beneficiary is entitled to receive had the proper contributions been remitted to the SSS and the amount payable on the basis of the contributions actually remitted.

WHEREFORE, PREMISES CONSIDERED, the Commission finds, and so holds, that respondent PICOP RESOURCES, INC. is liable to pay the SSS, within thirty (30) days from receipt hereof, the unremitted SS contributions corresponding to the petitioner's employment from November 1966 to December 1978 in the amount of One Thousand Three Hundred Seventy-Three Pesos and 10/100 (P1,373.10), the 3% per month penalty imposed thereon for late payment in the amount of Seventeen Thousand Sixty-Eight Pesos and 99/100 (P17,068.99), computed as of January 10, 2009, and damages in the amount of Seventy-Two Thousand Pesos (P72,000) for failure to remit all the contributions due the petitioner prior to his reaching the retirement age of sixty (60) on October 9, 2001, pursuant to Section 24(b) of the Social Security Act of 1997.

This is without prejudice to the right of the SSS to collect the additional 3% per month penalties that accrued after January 10, 2009 until fully paid.

Corollary herewith, the SSS is directed to immediately process and pay the petitioner's retirement benefit upon filing of the appropriate claim, it appearing from its records that he was born on October 9, 1941 and has already reached the retirement age of sixty (60) on October 9, 2001, subject to its existing rules and regulations, and to inform this Commission of its compliance herewith.

SO ORDERED.[9]

Petitioner filed a Motion for Reconsideration,[10] which the SSC denied in an Order[11] dated July 15, 2009. It held:

It is settled that no particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent evidence to prove the relationship may be admitted. For if only documentary

> evidence would be required to show the relationship, no scheming employer would ever be brought to the bar of justice, as no employer would wish to come out with any trace of illegality he has authored considering that it should take much weightier proof to invalidate a written instrument x x x.
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> Thus, the existence of a documentary evidence tending to prove a person's employment for a limited period, such as in this case the adverted certifications of employment issued by the respondent's Human Resource Management, does not preclude the admission of other evidence, documentary or testimonial, to prove his actual period of employment, which may be longer than what has been certified by his employer. The question of whether an employer-employee relationship exists is a question of fact and any competent evidence to prove the relationship may be admitted. Thus, in the petitioner's case, his positive and forthright testimony, as well as that of his witnesses, are considered competent proofs of his actual period of employment which may be admitted in addition to all the other evidence on record, testimonial or documentary.[12]

Ruling of the Court of Appeals

In a Petition for Review[13] filed with the CA and docketed as CA-G.R. SP No. 110724, petitioner sought reversal of the above SSC dispositions, arguing that the latter committed grave abuse of discretion in declaring that Belizar was employed by it until 1978, and in giving more weight to Belizar's testimonial evidence instead of its documentary evidence.

Meanwhile, it appears that on April 26, 2010, petitioner remitted to the SSS Davao City Branch Office the amount of P1,373.10, or the total adjudged unremitted/delinquent SSS contributions corresponding to Belizar's employment from November 1966 to December 1978. This was supposedly done in availment of Republic Act No. 9903 (RA 9903), or the Social Security Condonation Law of 2009. For this, the SSS Bislig City Branch issued a Certification[14] dated February 28, 2013, which states as follows:

> This is to certify that Picop Resources, Inc. (PRI) with SSS ER No. 09-1512165-0 had not filed an Application for Condonation of Penalty Program under R.A. No. 9903 or Social Security Condonation Law of 2009 in connection with SSC Case No. 11-15788-04 entitled 'Mateo Belizar vs. PRI.'
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> This is to certify further that PRI had paid Php1,373.10 on May 24, 2010 for the principal amount of its premium delinquency covering the period from January 1967 to December 1978 in favor of Mateo Belizar in compliance with the resolution of the Social Security Commission in SSC Case No. 11-15788-04. The penalties and damages, however, remain unpaid up to present.
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> Had the PRI applied for condonation of penalties under R.A. No. 9903 involving only one employee, Mateo Belizar, the same would be denied considering that the availment of the condonation of penalty program

under R.A. 9903 should be for all employees of the delinquent employer. [15]

On October 31, 2012, the CA issued the assailed Decision in CA-G.R. SP No. 110724, which contains the following pronouncement:

> THE PETITION LACKS MERIT.
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> x x x x
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> The respondent SSC, in determining the coverable period of employment of x x x Belizar was clearly within its jurisdiction. Its finding that the private respondent was continuously employed as a preventive maintenance mechanic by Bislig Bay Lumber Co., Inc/PICOP from 1966 to 1978 was duly supported by substantial evidence as found in the records of the case. It was anchored not only on the credible testimonies of respondent Mateo's witnesses but also on the material admissions of the petitioner on record. The SSC, in its assailed resolution ratiocinated in this wise:
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> > *'This finding is moored on the positive and straightforward testimonies of the petitioner's witnesses, namely: Ramon A. Osaraga, and his brother Anastacio Belizar, who, being co-employees of the petitioner within the same department of the respondent company, testified on the basis of their personal knowledge that the petitioner was, indeed, continuously employed by the respondent company during the said period. The sworn declarations of Felix V. Romero in the Joint Affidavit dated August 23, 2002 and that of Manuel M. Mijares in his Affidavit dated December 1, 2005, moreover, gave added evidentiary weight in establishing the petitioner's actual period of employment*
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> > *Based on the admission of the respondent in its Answer, the petitioner appears in its records to have been first employed in November 1966. Culled also from the certificate of employment dated September 14, 1977 issued by the respondent, the petitioner was paid a daily rate of P7.00 from November 3, 1966 until June 15, 1968. While there is testimonial evidence to prove that the petitioner worked with the respondent until 1978, it cannot be determined exactly when his employment ceased in that year, as well as the amount of his monthly compensation from July 1968 onwards. Hence, this Commission deems it appropriate to hold that the petitioner worked with the respondent from November 1966 until December 1978 and was paid the legal minimum wage then prevailing.'*
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> The public respondent SSS also argued that PICOP's assertion that its evidence deserve [sic] more probative value would entail the application of the rule on preponderance of evidence.
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> The findings of facts of quasi-judicial agencies, which have acquired