797 Phil. 656

THIRD DIVISION

[G.R. No. 198782, October 19, 2016]

ALLAN BAZAR, PETITIONER, VS. CARLOS A. RUIZOL, RESPONDENT.

D E C I S I O N

PEREZ, J.:

This is a petition for review of the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 00937-MIN dated 11 November 2010 and 8 September 2011, respectively.

The antecedent facts follow.

Respondent Carlos A. Ruizol (also identified as Carlos Ruisol in the Complaint, Labor Arbiter's Decision and in other pleadings) was a mechanic at Norkis Distributors and assigned at the Surigao City branch. He was terminated effective 27 March 2002. At the time of his termination, respondent was receiving a monthly salary of P2,050.00 and was working from 8:00 a.m. to 5:00 p.m. with a one-hour meal break for six (6) days in a week. Respondent claimed that petitioner Allan Bazar came from Tandag branch before he was assigned as a new manager in the Surigao City branch. Respondent added that he was dismissed by petitioner because the latter wanted to appoint his protege as a mechanic. Because of his predicament, respondent filed a complaint before Regional Arbitration Branch No. XIII of the National Labor Relations Commission (NLRC) in Butuan City for illegal dismissal and other monetary claims. An Amended Complaint was filed on 12 August 2002 changing the name of the petitioner therein from Norkis Display Center to Norkis Distributors, Inc. (NDI).

Petitioner, on the other hand, alleged that NDI is a corporation engaged in the sale, wholesale and retail of Yamaha motorcycle units. Petitioner countered that respondent is not an employee but a franchised mechanic of NDI pursuant to a retainership agreement. Petitioner averred that respondent, being the owner of a motor repair shop, performed repair warranty service, back repair of Yamaha units, and ordinary repair at his own shop. Petitioner maintained that NDI terminated the retainership contract with respondent because they were no longer satisfied with the latter's services.

On 8 October 2003,[3] Executive Labor Arbiter Noel Augusto S. Magbanua ruled in favor of respondent declaring him a regular employee of NDI and that he was illegally dismissed, to wit:

> WHEREFORE, judgment is hereby rendered:

1. Declaring [respondent] a regular employee of [NDI and petitioner];
2. Declaring [respondent's] dismissal illegal;
3. Ordering [NDI] to pay [respondent] Carlos A. Ruisol the total amount of TWO HUNDRED THREE THOUSAND FIVE HUNDRED FIFTY ONE PESOS & 33/100 (P203,551.33) representing his monetary award computed above.
4. Other claims of [respondent] are dismissed for lack of merit.[4]

The Labor Arbiter stressed that an employer-employee relationship existed in this case. He did not give any weight to the unsworn contract of retainership based on the reason that it is a clear circumvention of respondent's security of tenure.

On appeal, petitioner reiterated that there is no employer-employee relationship between NDI and respondent because the latter is only a retainer mechanic of NDI. Finding merit in the appeal, the NLRC reversed the ruling of the Labor Arbiter and dismissed the case for lack of cause of action. The NLRC held that respondent failed to refute petitioner's allegation that he personally owns a motor shop offering repair and check-up services to other customers and that he worked on the units referred by NDI either at his own motor shop or at NDI's service shop. The NLRC also ruled that NDI had no power of control and supervision over the means and method by which respondent performed job as mechanic. The NLRC concluded that respondent is bound to adhere to and respect the retainership contract wherein he declared and acknowledged that he is not an employee of NDI.

Respondent filed a petition for *certiorari* before the Court of Appeals, submitting that the Labor Arbiter's ruling had become final with respect to NDI because the latter failed to appeal the same. · Respondent asserted that the NLRC erred in ruling that there is no employer-employee relationship between the parties. Respondent also prayed for re'i?statement.

On 11 November 2010, the Court of Appeals:granted the petition. The Court of Appeals ruled that petitioner had no legal personality to make the appeal for NDI. The Court of Appeals held that te labor arbiter's decision with respect to NDI is final. The Court of Appeals found that there was employer-employee relationship between respondent and NDI and that respondent was unlawfully dismissed. Finally, the Court of Appeals awarded respondent separation pay in lieu of reinstatement.

Petitioner sought reconsideration of the decision but its motion for reconsideration was denied. Hence, this petition.

Before this Court, petitioner assigns the following alleged errors committed by the Court of Appeals:

1. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GRANTING THE PETITION FOR CERTIORARI, AND REVERSING THE "*DECISION*" AND "*RESOLUTION*" (ANNEXES "A" AND "B") OF THE NATIONAL LABOR RELATIONS COMMISSION - FIFTH DIVISION, CAGAYAN DE ORO CITY, AS THE SAME ARE NOT IN ACCORDANCE WITH EXISTING LAWS ANDIOR DECISIONS [PROMULGATED] BY

THE HONORABLE SUPREME COURT.

a. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE. DECISION OF THE HONORABLE SUPREME COURT THAT "JURISDICTION CANNOT BE ACQUIRED OVER THE DEFENDANT WITHOUT SERVICE OF SUMMONS, EVEN IF HE KNOWS OF THE CASE AGAINST HIM, UNLESS HE VOLUNTARILY SUBMITS TO THE JURISDICTION OF THE COURT BY APPEARING THEREIN AS THROUGH HIS COUNSEL FILING THE CORRESPONDING PLEADING IN THE CASE", PURSUANT TO THE RULING OF THIS HONORABLE SUPREME COURT IN THE CASE OF "HABANA VS. VAMENTA, ET AL., L-27091, JUNE 30, 1970."

b. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE LEGAL PRINCIPLE THAT "IT IS BASIC THAT A CORPORATION IS INVESTED BY LAW WITH A [PERSONALITY] SEPARATE AND DISTINCT FROM THOSE OF THE PERSONS COMPOSING IT AS WELL AS FROM THAT OF ANY OTHER LEGAL ENTITY TO WHICH IT MAY BE RELATED.", PURSUANT TO THE RULING OF THE HONORABLE SUPREME COURT IN THE CASE OF "ELCEE FARMS, INC. VS. NATIONAL LABOR RELATIONS COMMISSION, 512 SCRA 602."

c. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE RULE REGARDING "DECLARATION AGAINST INTEREST", PURSUANT TO SECTION 38, RULE 130 ON THE REVISED RULES ON EVIDENCE.

d. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE DECISION OF THE HONORABLE SUPREME COURT THAT "LD. CARDS WHERE THE WORDS "EMPLOYEE'S NAME" APPEAR PRINTED THEREIN DO NOT PROVE EMPLOYER EMPLOYEE RELATIONSHIP WHERE SAID I.D. CARDS ARE ISSUED FOR THE PURPOSE OF ENABLING CERTAIN "CONTRACTORS" SUCH AS SINGERS AND BAND PERFORMERS, TO ENTER THE PREMISES OF AN ESTABLISHMENT", PURSUANT TO THE RULING OF THIS HONORABLE SUPREME COURT IN THE CASE OF "TSPIC CORPORATION VS. TSPIC EMPLOYEES UNION (FFE), 545 SCRA 215."

2. THE HONORABLE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN RELEVANT AND UNDISPUTED FACTS THAT, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.

a. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO DECLARE THAT "NORKIS DISTRIBUTORS, INC. IS NOT A PARTY IN THE INSTANT CASE."

b. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO DECLARE THAT "THE DECISION OF THE LABOR

ARBITER IS NOT BINDING UPON NORKIS DISTRIBUTORS, INC."

c. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT, "WITH RESPECT TO NORKIS DISTRIBUTORS, INC., THE DECISION OF THE LABOR ARBITER HAD ALREADY BECOME FINAL", FOR THE REASON THAT NO JURISDICTION HAD BEEN ACQUIRED OVER NORKIS DISTRIBUTORS, INC. SINCE THERE WAS NO PROPER SERVICE OF SUMMONS UPON THE CORPORATION.

d. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SETTING ASIDE THE "DECISION" OF THE NATIONAL LABOR RELATIONS COMMISSION FIFTH DIVISION, CAGAYAN DE ORO CITY, AND REINSTATING THE "DECISION" OF THE LABOR ARBITER, AS RESPONDENT IS NOT AN EMPLOYEE OF NORKIS DISTRIBUTORS, INC., BUT ONLY A "RETAINER MECHANIC", JUST LIKE A RETAINER LAWYER WHO IS NOT AN EMPLOYEE OF THE LAWYER'S CLIENT.

e. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING THE : EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP, SINCE THERE IS AN ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN NORKIS DISTRIBUTORS, INC. AND RESPONDENT RUIZOL.

f. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE "MASTERLIST OF ALL EMPLOYEES" OF NORKIS DISTRIBUTORS, INC. AS PROOF THAT RESPONDENT RUIZOL IS NOT ITS EMPLOYEE.

g. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE "DECISION" OF THE LABOR ARBITER REGARDING THE AWARD OF 10% ATTORNEY'S FEES, FOR THE REASON THAT RESPONDENT WAS, AT THAT TIME, REPRESENTED BY A PUBLIC LAWYER FROM THE PUBLIC ATTORNEY'S OFFICE OF BUTUAN CITY.

h. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REINSTATING THE "DECISION" OF THE LABOR ARBITER, WHICH AWARDS BACKWAGES, SALARY DIFFERENTIAL, 13TH MONTH PAY, SEPARATION PAY, SERVICE INCENTIVE LEAVE AND ATTORNEY'S FEES, AS THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN NDI AND RESPONDENT RUIZOL.[5]

Petitioner first raises a question of procedure. Petitioner asserts that no summons was served on NDI. Thus, NDI had no reason to appeal the adverse decision of the Labor Arbiter because jurisdiction over its person was not acquired by the labor tribunal. Considering the foregoing, petitioner maintains that he cannot be made personally liable for the monetary awards because he has a personality separate and

distinct from NDI.

We partly grant the petition.

The NLRC, despite ruling against an employer-employee relationship had nevertheless upheld the jurisdiction of the Labor Arbiter over NDI. The NLRC ruled and we agree, thus:

> Indeed, NDI was impleaded as respondent in this case as clearly indicated in the amended complaint filed by [respondent] on August 12, 2002, contrary to the belief of [NDI and petitioner]. And considering that the summons and other legal processes issued by the Regional Arbitration Branch a quo were duly served to [petitioner] in his capacity as branch manager of NDI, the Labor Arbiter had validly acquired jurisdiction over the juridical person of NDI.[6]

The Court of Appeals correctly added that the Labor Arbiter's ruling with respect to NDI has become final and executory for the latter's failure to appeal within the reglementary period; and that petitioner had no legal personality to appeal for and/or behalf of the corporation.

Interestingly, despite vehemently arguing that NDI was not bound by the ruling because it was not impleaded as respondent to the complaint, petitioner in the same breath admits even if impliedly NDI is covered by the ruling, arguing that there cannot be any illegal dismissal because there is no employer-employee relationship between NDI and respondent. We are not convinced.

We emphasize at the outset that the existence of an employer employee relationship is ultimately a question of fact. Only errors of law are generally reviewed by this Court. Factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially when affirmed by the Court of Appeals, must be accorded high respect, if not finality.[7] We here see an exception to the rule on the binding effect on us of the factual conclusiveness of the quasi-judicial agency. The findings of the Labor Arbiter are in conflict with that of the NLRC and Court of Appeals. We can thus look into the factual issues involved in this case.

The four-fold test used in determining the, existence of employer employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and. method by which the work is to be accomplished.[8]

In finding that respondent was an employee of NDI, the Court of Appeals applied the four-fold test in this wise:

> x x x First, the services of [respondent] was indisputably engaged by the [NDI] without the aid of a third party. *Secondly*, the fact that the [respondent] was paid a retainer fee and on a *per diem* basis does not altogether negate the existence of an [employer]-employee relationship.