754 Phil. 251

SECOND DIVISION

[G.R. No. 199554, February 18, 2015]

ZENAIDA PAZ, PETITIONER, VS. NORTHERN TOBACCO REDRYING CO., INC., AND/OR ANGELO ANG, RESPONDENTS.

D E C I S I O N

LEONEN, J.:

Zenaida Paz filed this Petition[1] praying that "the computation of Petitioner's Retirement Pay as determined by the National Labor Relations Commission in its Decision dated 08 December 2008 be reinstated."[2]

Northern Tobacco Redrying Co., Inc. (NTRCI), a flue-curing and redrying of tobacco leaves business,[3] employs approximately 100 employees with seasonal workers "tasked to sort, process, store and transport tobacco leaves during the tobacco season of March to September."[4]

NTRCI hired Zenaida Paz (Paz) sometime in 1974 as a seasonal sorter, paid P185.00 daily. NTRCI regularly re-hired her every tobacco season since then. She signed a seasonal job contract at the start of her employment and a pro-forma application letter prepared by NTRCI in order to qualify for the next season.[5]

On May 18, 2003,[6] Paz was 63 years old when NTRCI informed her that she was considered retired under company policy.[7] A year later, NTRCI told her she would receive P12,000.00 as retirement pay.[8]

Paz, with two other complainants, filed a Complaint for illegal dismissal against NTRCI on March 4, 2004.[9] She amended her Complaint on April 27, 2004 into a Complaint for payment of retirement benefits, damages, and attorney's fees[10] as P12,000.00 seemed inadequate for her 29 years of service.[11] The Complaint impleaded NTRCI's Plant Manager, Angelo Ang, as respondent.[12] The Complaint was part of the consolidated Complaints of 17 NTRCI workers.[13]

NTRCI countered that no Collective Bargaining Agreement (CBA) existed between NTRCI and its workers. Thus, it computed the retirement pay of its seasonal workers based on Article 287 of the Labor Code.[14]

NTRCI raised the requirement of at least six months of service a year for that year to be considered in the retirement pay computation. It claimed that Paz only worked for at least six months in 1995, 1999, and 2000 out of the 29 years she rendered service. Thus, Paz's retirement pay amounted to P12,487.50 after multiplying her ?185.00 daily salary by 22½ working days in a month, for three

years.[15]

The Labor Arbiter in his Decision[16] dated July 26, 2005 "[c]onfirm[ed] that the correct retirement pay of Zenaida M. Paz [was] ?12,487.50."[17]

The National Labor Relations Commission in its Decision[18] dated December 8, 2008 modified the Labor Arbiter's Decision. It likewise denied reconsideration. The Decision's dispositive portion reads:

> **WHEREFORE**, premises considered, the decision of the labor arbiter is hereby **MODIFIED**. Complainant Appellant Zenaida Paz[']s] retirement pay should be computed pursuant to RA 7641 and that all the months she was engaged to work for respondent for the last twenty eight (28) years should be added and divide[d] by six (for a fraction of six months is considered as one year) to get the number of years [for] her retirement pay[.] Complainant Teresa Lopez is hereby entitled to her separation pay computed at one half month pay for every year of service, a fraction of six months shall be considered as one year, plus backwages from the time she was illegally dismissed up to the filing of her complaint.
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> The rest of the decision stays.
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> **SO ORDERED**.[19]

The Court of Appeals in its Decision[20] dated May 25, 2011 dismissed the Petition and modified the National Labor Relations Commission's Decision in that "financial assistance is awarded to . . . Zenaida Paz in the amount of P60,356.25":[21]

> **WHEREFORE**, the *Petition* is hereby **DISMISSED**. The *Decision* dated 8 December 2008 and *Resolution* dated 16 September 2009 of the National Labor Relations Commission in NLRC CA No. 046642-05(5) are **MODIFIED** in that (1) financial assistance is awarded to private respondent Zenaida Paz in the amount of P60,356.25; and (2) the dismissal of private respondent Teresa Lopez is declared illegal, and thus, she is awarded backwages and separation pay, in accordance with the foregoing discussion.
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> **SO ORDERED**.[22]

The Court of Appeals found that while applying the clear text of Article 287 resulted in the amount of P12,487.50 as retirement pay, "this amount [was] so meager that it could hardly support . . . Paz, now that she is weak and old, unable to find employment."[23] It discussed jurisprudence on financial assistance and deemed it appropriate to apply the formula: One-half-month pay multiplied by 29 years of service divided by two yielded P60,356.25 as Paz's retirement pay.[24]

Paz comes before this court seeking to reinstate the National Labor Relations Commission's computation.[25] NTRCI filed its Comment,[26] and this court deemed waived the filing of a Reply.[27]

Petitioner Paz contends that respondent NTRCI failed to prove the alleged company policy on compulsory retirement for employees who reached 60 years of age or who rendered 30 years of service, whichever came first.[28] Consequently, Article 287, as amended by Republic Act No. 7641,[29] applies and entitles her to "retirement pay . . . equivalent to [at least] one-half month salary for every year of service, a fraction of at least six (6) months being considered as one whole year."[30] She adds that she was then 63 years old, and while one may opt to retire at 60 years old, the compulsory retirement age is 65 years old under Article 287, as amended.[31]

Petitioner Paz then argues respondent NTRCI's misplaced reliance on *Philippine Tobacco Flue-Curing & Redrying Corp. v. National Labor Relations Commission*[32] as that case involved separation pay computation.[33]

Lastly, petitioner Paz contends lack of legal basis that "an employee should have at least worked for six (6) months for a particular season for that season to be included in the computation of retirement pay[.]"[34] She submits that regular seasonal employees are still considered employees during off-season, and length of service determination should be applied in retiree's favor.[35]

Respondent NTRCI counters that in retirement pay computation this court should consider its ruling in *Philippine Tobacco* on computing separation pay of seasonal employees. It submits that the proviso "a fraction of at least six (6) months being considered as one (1) whole year" appears in both Article 287 on retirement pay and Articles 283 and 284 on separation pay.[36]

Respondent NTRCI argues that unlike regular employees, seasonal workers like petitioner Paz can offer their services to other employers during off-season. Thus, the six-month rule avoids the situation where seasonal workers receive retirement pay twice — an even more favorable position compared with regular employees.[37]

Both parties appear to agree on petitioner Paz's entitlement to retirement pay. The issue before this court involves its proper computation. We also resolve whether there was illegal dismissal.

We affirm the Court of Appeals' decision with modification.

Regular seasonal employees

Article 280[38] of the Labor Code and jurisprudence identified three types of employees, namely: "(1) 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; (2) 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 engagement of the employee or where the

work or service to be performed is seasonal in nature and the employment is for the duration of the season; and (3) casual employees or those who are neither regular nor project employees."[39]

Jurisprudence also recognizes the status of regular seasonal employees.[40]

Mercado, Sr. v. National Labor Relations Commission[41] did not consider as regular employees the rice and sugar farmland workers who were paid with daily wages. This was anchored on the Labor Arbiter's findings that "petitioners were required to perform phases of agricultural work for a definite period, after which their services [were] available to any farm owner."[42]

This court explained that the proviso in the second paragraph of Article 280 in 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" applies only to "casual" employees and not "project" and regular employees in the first paragraph of Article 280.[43]

On the other hand, the workers of La Union Tobacco Redrying Corporation in *Abasolo v. National Labor Relations Commission*[44] were considered regular seasonal employees since they performed services necessary and indispensable to the business for over 20 years, even if their work was only during tobacco season.[45] This court applied the test laid down in *De Leon v. National Labor Relations Commission*[46] for determining regular employment status:

> [T]he test of whether or not an employee is a regular employee has been laid down in *De Leon v. NLRC*, in which this Court held:
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> > 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 the 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.
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> Thus, the nature of one's employment does not depend solely on the will or word of the employer. Nor on the procedure for hiring and the manner of designating the employee, but on the nature of the activities to be performed by the employee, considering the employer's nature of business and the duration and scope of work to be done.

> *In the case at bar,* ***while it may appear that the work of petitioners is seasonal, inasmuch as petitioners have served the company for many years, some for over 20 years, performing services necessary and indispensable to LUTORCO's business, serve as badges of regular employment. Moreover, the fact that petitioners do not work continuously for one whole year but only for the duration of the tobacco season does not detract from considering them in regular employment*** since in a litany of cases this Court has already settled that seasonal workers who are called to work from time to time and are temporarily laid off during off-season are not separated from service in said period, but are merely considered on leave until re-employed.
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> Private respondent's reliance on the case of *Mercado v. NLRC* is misplaced considering that since in said case of *Mercado*, although the respondent company therein consistently availed of the services of the petitioners therein from year to year, it was clear that petitioners therein were not in respondent company's regular employ. Petitioners therein performed different phases of agricultural work in a given year. However, during that period, they were free to contract their services to work for other farm owners, as in fact they did. Thus, the Court ruled in that case that their employment would naturally end upon the completion of each project or phase of farm work for which they have been contracted.[47] (Emphasis supplied, citations omitted)

The sugarcane workers in *Hacienda Fatima v. National Federation of Sugarcane Workers-Food and General Trade*[48] were also considered as regular employees since they performed the same tasks every season for several years:

> For respondents to be excluded from those classified as regular employees, it is not enough that they perform work or services that are seasonal in nature. They must have also been employed *only for the duration of one season*. . . . Evidently, petitioners employed respondents for more than one season. Therefore, the general rule of regular employment is applicable.
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> . . . .
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> The CA did not err when it ruled that *Mercado v. NLRC* was not applicable to the case at bar. In the earlier case, the workers were required to perform phases of agricultural work for a definite period of time, after which their services would be available to any other farm owner. They were not hired regularly and repeatedly for the same phase/s of agricultural work, but on and off for any single phase thereof. On the other hand, herein respondents, ***having performed the same tasks for petitioners every season for several years, are considered the latter's regular employees for their respective tasks***. Petitioners' eventual refusal to use their services — even if they were ready, able and willing to perform their usual duties whenever these were available —