

THIRD DIVISION

[G.R. No. 204406, February 26, 2014]

**MACARTHUR MALICDEM AND HERMENIGILDO FLORES,
PETITIONERS, VS. MARULAS INDUSTRIAL CORPORATION AND
MIKE MANCILLA, RESPONDENTS.**

DECISION

MENDOZA, J.:

This petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court filed by Macarthur Malicdem (*Malicdem*) and Hermenigildo Flores (*Flores*) assails the July 18, 2012 Decision^[2] and the November 12, 2012 Resolution^[3] of the Court of Appeals(CA)in CA-G.R. SP No. 124470, dismissing their petition for *certiorari* under Rule 65 in an action for illegal dismissal.

The Facts:

A complaint^[4] for illegal dismissal, separation pay, money claims, moral and exemplary damages, and attorney's fees was filed by petitioners Malicdem and Flores against respondents Marulas Industrial Corporation (*Marulas*) and Mike Mancilla(*Mancilla*), who were engaged in the business of manufacturing sacks intended for local and export markets.

Malicdem and Flores were first hired by Marulas as extruder operators in 2006, as shown by their employment contracts. They were responsible for the bagging of filament yarn, the quality of pp yarn package and the cleanliness of the work place area. Their employment contracts were for a period of one (1) year. Every year thereafter, they would sign a Resignation/Quitclaim in favor of Marulas a day after their contracts ended, and then sign another contract for one (1) year. Until one day, on December 16, 2010, Flores was told not to report for work anymore after being asked to sign a paper by Marulas' HR Head to the effect that he acknowledged the completion of his contractual status. On February 1, 2011, Malicdem was also terminated after signing a similar document. Thus, both claimed to have been illegally dismissed.

Marulas countered that their contracts showed that they were fixed-term employees for a specific undertaking which was to work on a particular order of a customer for a specific period. Their severance from employment was due to the expiration of their contracts.

On February 7, 2011, Malicdem and Flores lodged a complaint against Marulas and Mancilla for illegal dismissal.

On July 13, 2011, the Labor Arbiter (*LA*) rendered a decision^[5] in favor of the respondents, finding no illegal dismissal. He ruled that Malicdem and Flores were not

terminated and that their employment naturally ceased when their contracts expired. The LA, however, ordered Marulas to pay Malicdem and Flores their respective wage differentials, to wit:

WHEREFORE, the complaints for illegal dismissal are dismissed for lack of merit. Respondent Marulas Industrial Corporation is, however, ordered to pay complainants wage differential in the following amounts:

1. Macarthur	P20,111.26
Malicdem	
2/2/07 –	
6/13/08 =	
None	
6/14/08 –	
8/27/08 =	
2.47 mos.	
P377 – 362	
= P15	
x 26 days x	963.30
2.47 mos. =	
8/28/08 –	
6/30/10 =	
22.06 mos.	
P382 – P362	
= P20	
x 26 days x	11,471.20
22.06 mos.	
=	
7/1/10 –	
2/2/11 =	
7.03 mos.	
P404 – P362	
= P42	
x 26 days x	<u>7,676.76</u>
7.03 mos. =	
	20,111.26

and

2. Herminigildo	P18,440.50
Flores	
2/2/08 –	
6/13/08 =	
4.36 mos.	
None	
6/14/08 –	963.30
8/27/08 =	
8/28/08 –	11,471.20
6/30/10 =	
7/1/10 –	
12/16/10 =	
5.50 mos.	

$$\begin{array}{r} P404 \times P362 \\ = P42 \\ \times 26 \text{ days} \times \\ 5.50 \text{ mos.} = \end{array} \quad \begin{array}{r} \underline{6,006.00} \\ 18,440.50 \end{array}$$

All other claims are dismissed for lack of merit.

SO ORDERED.^[6]

Malicdem and Flores appealed to the NLRC which partially granted their appeal with the award of payment of 13th month pay, service incentive leave and holiday pay for three (3) years. The dispositive portion of its December 19, 2011 Decision^[7] reads:

WHEREFORE, the appeal is **GRANTED IN PART**. The Decision of Labor Arbiter Raymund M. Celino, dated July 13, 2011, is **MODIFIED**. In addition to the award of salary differentials, complainants should also be awarded 13th month pay, service incentive leave and holiday pay for three years.

SO ORDERED.^[8]

Still, petitioners filed a motion for reconsideration, but it was denied by the NLRC on February 29, 2011.

Aggrieved, Malicdem and Flores filed a petition for *certiorari* under Rule 65 with the CA.

On July 18, 2012, the CA denied the petition,^[9] finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC. It ruled that the issue of whether or not the petitioners were project employees or regular employees was factual in nature and, thus, not within the ambit of a petition for *certiorari*. Moreover, it accorded respect and due consideration to the factual findings of the NLRC, affirming those of the LA, as they were supported by substantial evidence.

On the substantive issue, the CA explained that "the repeated and successive rehiring of project employees do not qualify them as regular employees, as length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, its completion has been determined at the time of the engagement of the employee."^[10]

Corollarily, considering that there was no illegal dismissal, the CA ruled that payment of backwages, separation pay, damages, and attorney's fees had no factual and legal bases. Hence, they could not be awarded to the petitioners.

Aggrieved, Malicdem and Flores filed a motion for reconsideration, but their pleas were denied in the CA Resolution, dated November 12, 2012.

The Petition

Malicdem and Flores now come before this Court by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court praying for thereversal of the CA decision anchored on the principalargument that the appellate court erred in affirming the NLRC decision that there was no illegal dismissal because the petitioners' contracts of employment with the respondents simply expired. They claim that their continuous rehiring paved the way for their regularization and, for said reason,they could not be terminated from their jobs without just cause.

In their Comment,^[11] the respondentsaverred that the petitioners failed to show that the CA erred in affirming the NLRC decision. They posit that the petitioners were contractual employees and their rehiring did not amount to regularization. The CA cited *William Uy Construction Corp. v. Trinidad*,^[12] where it was held that the repeated and successive rehiring of project employees did not qualify them as regular employees, as length of service was not the controlling determinant of the employment tenure of a project employee, but whether the employment had been fixed for a specific project or undertaking, its completion had been determined at the time of the engagement of the employee. The respondents add that for said reason, the petitioners were not entitled to full backwages, separation pay, moral and exemplary damages, and attorney's fees.

Now, the question is whether or not the CA erred in not finding any grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC.

The Court's Ruling:

The Court grants the petition.

The petitioners have convincingly shownthat they should be considered regular employees and, as such, entitled to full backwages and other entitlements.

A reading of the 2008 employment contracts,^[13] denominated as "Project Employment Agreement," reveals that there was a stipulated probationary period of six (6) months from its commencement. It was provided therein that in the event that they would beable to comply with the company's standards and criteria within such period, they shall be reclassified as project employees with respect to the remaining period of the effectivity of the contract. Specifically, paragraph 3(b) of the agreement reads:

The SECOND PARTY hereby acknowledges, agrees and understands that the nature of his/her employment is probationary and on a project-basis. The SECOND PARTY further acknowledges, agrees and understands that within the effectivity of this Contract, his/her job performance will be evaluated in accordance with the standards and criteria explained and disclosed to him/her prior to signing of this Contract. **In the event that the SECOND PARTY is able to comply with the said standards and criteria within the probationary period of six month/s from commencement of this Contract, he/she shall be reclassified as a project employee of (o)f the FIRST PARTY** with respect to the remaining period of the effectivity of this Contract.

Under Article 281 of the Labor Code, however, "an employee who is allowed to work after a probationary period shall be considered a regular employee." When an