

## FIRST DIVISION

[ G.R. No. 193493, June 13, 2013 ]

**JAIME N. GAPAYAO, PETITIONER, VS. ROSARIO FULO, SOCIAL SECURITY SYSTEM AND SOCIAL SECURITY COMMISSION, RESPONDENTS.**

### D E C I S I O N

**SERENO, C.J.:**

This is a Rule 45 Petition<sup>[1]</sup> assailing the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP. No. 101688, affirming the Resolution<sup>[4]</sup> of the Social Security Commission (SSC). The SSC held petitioner Jaime N. Gapayao liable to pay the unpaid social security contributions due to the deceased Jaime Fulo, and the Social Security System (SSS) to pay private respondent Rosario L. Fulo, the widow of the deceased, the appropriate death benefits pursuant to the Social Security Law.

The antecedent facts are as follows:

On 4 November 1997, Jaime Fulo (deceased) died of "acute renal failure secondary to 1<sup>st</sup> degree burn 70% secondary electrocution"<sup>[5]</sup> while doing repairs at the residence and business establishment of petitioner located at San Julian, Irosin, Sorsogon.

Allegedly moved by his Christian faith, petitioner extended some financial assistance to private respondent. On 16 November 1997, the latter executed an Affidavit of Desistance<sup>[6]</sup> stating that she was not holding them liable for the death of her late husband, Jaime Fulo, and was thereby waiving her right and desisting from filing any criminal or civil action against petitioner.

On 14 January 1998, both parties executed a Compromise Agreement,<sup>[7]</sup> the relevant portion of which is quoted below:

We, the undersigned unto this Honorable Regional Office/District Office/Provincial Agency Office respectfully state:

1. The undersigned employer, hereby agrees to pay the sum of FORTY THOUSAND PESOS (?40,000.00) to the surviving spouse of JAIME POLO, an employee who died of an accident, as a complete and full payment for all claims due the victim.

2. On the other hand, the undersigned surviving spouse of the victim having received the said amount do [sic] hereby release and discharge the employer from any and all claims that maybe due the victim in connection with the victim's employment thereat.

Thereafter, private respondent filed a claim for social security benefits with the Social Security System (SSS)–Sorosogon Branch.<sup>[8]</sup> However, upon verification and evaluation, it was discovered that the deceased was not a registered member of the SSS.<sup>[9]</sup>

Upon the insistence of private respondent that her late husband had been employed by petitioner from January 1983 up to his untimely death on 4 November 1997, the SSS conducted a field investigation to clarify his status of employment. In its field investigation report,<sup>[10]</sup> it enumerated its findings as follows:

In connection with the complaint filed by Mrs. Rosario Fulo, hereunder are the findings per interview with **Mr. Leonor Delgra, Santiago Bolanos and Amado Gacelo**:

1. That Mr. Jaime Fulo was an employee of Jaime Gapayao as farm laborer from 1983 to 1997.
2. Mr. Leonor Delgra and Santiago Bolanos are co-employees of Jaime Fulo.
3. Mr. Jaime Fulo receives compensation on a daily basis ranging from ₱5.00 to ₱60.00 from 1983 to 1997.

**Per interview from Mrs. Estela Gapayao, please be informed that:**

1. Jaime Fulo is an employee of Mr. & Mrs. Jaime Gapayao on an extra basis.
2. Sometimes Jaime Fulo is allowed to work in the farm as abaca harvester and earn 1/3 share of its harvest as his income.
3. Mr. & Mrs. Gapayao hired the services of Jaime Fulo not only in the farm as well as in doing house repairs whenever it is available. Mr. Fulo receives his remuneration usually in the afternoon after doing his job.
4. Mr. & Mrs. Gapayao hires 50-100 persons when necessary to work in their farm as laborer and Jaime Fulo is one of them. Jaime Fulo receives more or less ₱50.00 a day. (Emphases in the original)

Consequently, the SSS demanded that petitioner remit the social security contributions of the deceased. When petitioner denied that the deceased was his employee, the SSS required private respondent to present documentary and testimonial evidence to refute petitioner's allegations.<sup>[11]</sup>

Instead of presenting evidence, private respondent filed a Petition<sup>[12]</sup> before the SSC on 17 February 2003. In her Petition, she sought social security coverage and payment of contributions in order to avail herself of the benefits accruing from the death of her husband.

On 6 May 2003, petitioner filed an Answer<sup>[13]</sup> disclaiming any liability on the premise that the deceased was not the former's employee, but was rather an independent contractor whose tasks were not subject to petitioner's control and supervision.<sup>[14]</sup> Assuming *arguendo* that the deceased was petitioner's employee, he was still not entitled to be paid his SSS premiums for the intervening period when he was not at work, as he was an "intermittent worker who [was] only summoned every now and then as the need [arose]."<sup>[15]</sup> Hence, petitioner insisted that he was under no obligation to report the former's demise to the SSS for social security coverage.

Subsequently, on 30 June 2003, the SSS filed a Petition-in-Intervention<sup>[16]</sup> before the SSC, outlining the factual circumstances of the case and praying that judgment be rendered based on the evidence adduced by the parties.

On 14 March 2007, the SSC rendered a Resolution,<sup>[17]</sup> the dispositive portion of which provides:

**WHEREFORE, PREMISES CONSIDERED**, this Commission finds, and so holds, that Jaime Fulo, the late husband of petitioner, was employed by respondent Jaime N. Gapayao from January 1983 to November 4, 1997, working for nine (9) months a year receiving the minimum wage then prevailing.

Accordingly, the respondent is hereby ordered to pay P45,315.95 representing the unpaid SS contributions due on behalf of deceased Jaime Fulo, the amount of P217,710.33 as 3% per month penalty for late remittance thereof, computed as of March 30, 2006, without prejudice to the collection of additional penalty accruing thereafter, and the sum of P230,542.20 (SSS) and P166,000.00 (EC) as damages for the failure of the respondent to report the deceased Jaime Fulo for SS coverage prior to his death pursuant to Section 24(a) of the SS Law, as amended.

The SSS is hereby directed to pay petitioner Rosario Fulo the appropriate death benefit, pursuant to Section 13 of the SS Law, as amended, as well as its prevailing rules and regulations, and to inform this Commission of its compliance herewith.

**SO ORDERED.**

On 18 May 2007, petitioner filed a Motion for Reconsideration,<sup>[18]</sup> which was denied in an Order<sup>[19]</sup> dated 16 August 2007.

Aggrieved, petitioner appealed to the CA on 19 December 2007.<sup>[20]</sup> On 17 March 2010, the CA rendered a Decision<sup>[21]</sup> in favor of private respondent, as follows:

In fine, public respondent SSC had sufficient basis in concluding that private respondent's husband was an employee of petitioner and should, therefore, be entitled to compulsory coverage under the Social Security Law.

Having ruled in favor of the existence of employer-employee relationship between petitioner and the late Jaime Fulo, it is no longer necessary to dwell on the other issues raised.

Resultantly, for his failure to report Jaime Fulo for compulsory social security coverage, petitioner should bear the consequences thereof. Under the law, an employer who fails to report his employee for social security coverage is liable to [1] pay the benefits of those who die, become disabled, get sick or reach retirement age; [2] pay all unpaid contributions plus a penalty of three percent per month; and [3] be held liable for a criminal offense punishable by fine and/or imprisonment. But an employee is still entitled to social security benefits even is (sic) his employer fails or refuses to remit his contribution to the SSS.

**WHEREFORE**, premises considered, the Resolution appealed from is **AFFIRMED in toto**.

**SO ORDERED.**

In holding thus, the CA gave credence to the findings of the SSC. The appellate court held that it "does not follow that a person who does not observe normal hours of work cannot be deemed an employee."<sup>[22]</sup> For one, it is not essential for the employer to actually supervise the performance of duties of the employee; it is sufficient that the former has a right to wield the power. In this case, petitioner exercised his control through an overseer in the person of Amado Gacelo, the tenant on petitioner's land.<sup>[23]</sup> Most important, petitioner entered into a Compromise Agreement with private respondent and expressly admitted therein that he was the employer of the deceased.<sup>[24]</sup> The CA interpreted this admission as a declaration against interest, pursuant to Section 26, Rule 130 of the Rules of Court.<sup>[25]</sup>

Hence, this petition.

Public respondents SSS<sup>[26]</sup> and SSC<sup>[27]</sup> filed their Comments on 31 January 2011 and 28 February 2011, respectively, while private respondent filed her Comment on 14 March 2011.<sup>[28]</sup> On 6 March 2012, petitioner filed a "Consolidated Reply to the Comments of the Public Respondents SSS and SSC and Private Respondent Rosario Fulo."<sup>[29]</sup>

### **ISSUE**

The sole issue presented before us is whether or not there exists between the deceased Jaime Fulo and petitioner an employer-employee relationship that would merit an award of benefits in favor of private respondent under social security laws.

### **THE COURT'S RULING**

In asserting the existence of an employer-employee relationship, private respondent alleges that her late husband had been in the employ of petitioner for 14 years, from 1983 to 1997.<sup>[30]</sup> During that period, he was made to work as a laborer in the agricultural landholdings, a harvester in the abaca plantation, and a repairman/utility worker in several business establishments owned by petitioner.<sup>[31]</sup> To private respondent, the "considerable length of time during which [the deceased] was given diverse tasks by petitioner was a clear indication of the necessity and indispensability of her late husband's services to petitioner's business."<sup>[32]</sup> This view is bolstered by the admission of petitioner himself in the Compromise Agreement that he was the deceased's employer.<sup>[33]</sup>

Private respondent's position is similarly espoused by the SSC, which contends that its findings are duly supported by evidence on record.<sup>[34]</sup> It insists that *pakyaw* workers are considered employees, as long as the employer exercises control over them. In this case, the exercise of control by the employer was delegated to the caretaker of his farm, Amado Gacelo. The SSC further asserts that the deceased rendered services essential for the petitioner's harvest. While these services were not rendered continuously (in the sense that they were not rendered every day throughout the year), still, the deceased had never stopped working for petitioner from year to year until the day the former died.<sup>[35]</sup> In fact, the deceased was required to work in the other business ventures of petitioner, such as the latter's bakery and grocery store.<sup>[36]</sup> The Compromise Agreement entered into by petitioner with private respondent should not be a bar to an employee demanding what is legally due the latter.<sup>[37]</sup>

The SSS, while clarifying that it is "neither adversarial nor favoring any of the private parties x x x as it is only tasked to carry out the purposes of the Social Security Law,"<sup>[38]</sup> agrees with both private respondent and SSC. It stresses that factual findings of the lower courts, when affirmed by the appellate court, are generally conclusive and binding upon the Court.<sup>[39]</sup>

Petitioner, on the other hand, insists that the deceased was not his employee. Supposedly, the latter, during the performance of his function, was not under petitioner's control. Control is not necessarily present even if the worker works inside the premises of the person who has engaged his services.<sup>[40]</sup> Granting without admitting that petitioner gave rules or guidelines to the deceased in the process of the latter's performing his work, the situation cannot be interpreted as control, because it was only intended to promote mutually desired results.<sup>[41]</sup>

Alternatively, petitioner insists that the deceased was hired by Adolfo Gamba, the contractor whom he had hired to construct their building;<sup>[42]</sup> and by Amado Gacelo, the tenant whom petitioner instructed to manage the latter's farm.<sup>[43]</sup> For this reason, petitioner believes that a tenant is not beholden to the landlord and is not under the latter's control and supervision. So if a worker is hired to work on the land of a tenant – such as petitioner – the former cannot be the worker of the landlord, but of the tenant's.<sup>[44]</sup>

Anent the Compromise Agreement, petitioner clarifies that it was executed to buy