

FIRST DIVISION

[G.R. No. 192394, July 03, 2013]

**ROY D. PASOS, PETITIONER, VS. PHILIPPINE NATIONAL
CONSTRUCTION CORPORATION, RESPONDENT.**

D E C I S I O N

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the March 26, 2010 Decision^[1] and May 26, 2010 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 107805. The appellate court had affirmed the Decision^[3] of the National Labor Relations Commission (NLRC) dismissing the illegal dismissal complaint filed by petitioner Roy D. Pasos against respondent Philippine National Construction Corporation (PNCC).

The antecedent facts follow:

Petitioner Roy D. Pasos started working for respondent PNCC on April 26, 1996. Based on the PNCC's "Personnel Action Form Appointment for Project Employment" dated April 30, 1996,^[4] petitioner was designated as "Clerk II (Accounting)" and was assigned to the "NAIA – II Project." It was likewise stated therein:

PARTICULARS: Project employment starting on **April 26, 1996 to July 25, 1996**. This contract maybe terminated at anytime for cause as provided for by law and/or existing Company Policy. This maybe terminated if services are unsatisfactory, or when it shall no longer needed, as determined by the Company. If services are still needed beyond the validity of this contract, the Company shall extend your services. After services are terminated, the employee shall be under no obligation to re-employ with the Company nor shall the Company be obliged to re-employ the employee.^[5] (Emphasis supplied.)

Petitioner's employment, however, did not end on July 25, 1996 but was extended until August 4, 1998, or more than two years later, based on the "Personnel Action Form – Project Employment" dated July 7, 1998.^[6]

Based on PNCC's "Appointment for Project Employment" dated November 11, 1998,^[7] petitioner was rehired on even date as "Accounting Clerk (Reliever)" and assigned to the "PCSO – Q.I. Project." It was stated therein that his employment shall end on February 11, 1999 and may be terminated for cause or in accordance with the provisions of Article 282 of the Labor Code, as amended. However, said employment did not actually end on February 11, 1999 but was extended until

February 19, 1999 based on the "Personnel Action Form-Project Employment" dated February 17, 1999.^[8]

On February 23, 1999, petitioner was again hired by PNCC as "Accounting Clerk" and was assigned to the "SM-Project" based on the "Appointment for Project Employment" dated February 18, 1999.^[9] It did not specify the date when his employment will end but it was stated therein that it will be "co-terminus with the completion of the project." Said employment supposedly ended on August 19, 1999 per "Personnel Action Form – Project Employment" dated August 18, 1999,^[10] where it was stated, "[t]ermination of [petitioner's] project employment due to completion of assigned phase/stage of work or project effective at the close of office hour[s] on 19 August 1999." However, it appears that said employment was extended per "Appointment for Project employment" dated August 20, 1999^[11] as petitioner was again appointed as "Accounting Clerk" for "SM Project (Package II)." It did not state a specific date up to when his extended employment will be, but it provided that it will be "co-terminus with the x x x project." In "Personnel Action Form – Project Employment" dated October 17, 2000,^[12] it appears that such extension would eventually end on October 19, 2000.

Despite the termination of his employment on October 19, 2000, petitioner claims that his superior instructed him to report for work the following day, intimating to him that he will again be employed for the succeeding SM projects. For purposes of reemployment, he then underwent a medical examination which allegedly revealed that he had pneumonitis. Petitioner was advised by PNCC's physician, Dr. Arthur C. Obena, to take a 14-day sick leave.

On November 27, 2000, after serving his sick leave, petitioner claims that he was again referred for medical examination where it was revealed that he contracted Koch's disease. He was then required to take a 60-day leave of absence.^[13] The following day, he submitted his application for sick leave but PNCC's Project Personnel Officer, Mr. R.S. Sanchez, told him that he was not entitled to sick leave because he was not a regular employee.

Petitioner still served a 60-day sick leave and underwent another medical examination on February 16, 2001. He was then given a clean bill of health and was given a medical clearance by Dr. Obena that he was fit to work.

Petitioner claims that after he presented his medical clearance to the Project Personnel Officer on even date, he was informed that his services were already terminated on October 19, 2000 and he was already replaced due to expiration of his contract. This prompted petitioner on February 18, 2003 to file a complaint^[14] for illegal dismissal against PNCC with a prayer for reinstatement and back wages. He argued that he is deemed a regular employee of PNCC due to his prolonged employment as a project employee as well as the failure on the part of PNCC to report his termination every time a project is completed. He further contended that his termination without the benefit of an administrative investigation was tantamount to an illegal dismissal.

PNCC countered that petitioner was hired as a project employee in several projects with specific dates of engagement and termination and had full knowledge and

consent that his appointment was only for the duration of each project. It further contended that it had sufficiently complied with the reportorial requirements to the Department of Labor and Employment (DOLE). It submitted photocopies of three Establishment Termination Reports it purportedly filed with the DOLE. They were for: (1) the "PCSO-Q.I. Project" for February 1999;^[15] (2) "SM Project" for August 1999;^[16] and (3) "SM Project" for October 2000,^[17] all of which included petitioner as among the affected employees. The submission of termination reports by PNCC was however disputed by petitioner based on the verifications^[18] issued by the DOLE NCR office that he was not among the affected employees listed in the reports filed by PNCC in August 1998, February 1999, August 1999 and October 2000.

On March 28, 2006, the Labor Arbiter rendered a Decision^[19] in favor of petitioner. The *fallo* reads:

WHEREFORE, premises considered, the complainant had attained regular employment thereby making his termination from employment illegal since it was not for any valid or authorized causes. Consequently, Respondent is ordered to pay complainant his full backwages less six (6) months computed as follows:

Backwages:

Feb. 18, 2000 – March 28, 2006 = 73.33 mos.

P6,277.00 x 73.33 = P460,292.41

Less:

P6,277.00 X 6 mos. = 37,662.00

P422,630.41

The reinstatement could not as well be ordered due to the strained relations between the parties, that in lieu thereof, separation pay is ordered paid to complainant in the amount of P37,662.00 [P6,277.00 x 6].

SO ORDERED.^[20]

The Labor Arbiter ruled that petitioner attained regular employment status with the repeated hiring and rehiring of his services more so when the services he was made to render were usual and necessary to PNCC's business. The Labor Arbiter likewise found that from the time petitioner was hired in 1996 until he was terminated, he was hired and rehired by PNCC and made to work not only in the project he had signed to work on but on other projects as well, indicating that he is in fact a regular employee. He also noted petitioner's subsequent contracts did not anymore indicate the date of completion of the contract and the fact that his first contract was extended way beyond the supposed completion date. According to the Labor Arbiter, these circumstances indicate that the employment is no longer a project employment but has graduated into a regular one. Having attained regular status, the Labor Arbiter ruled that petitioner should have been accorded his right to security of tenure.

Both PNCC and petitioner appealed the Labor Arbiter's decision. PNCC insisted that

petitioner was just a project employee and his termination was brought about by the completion of the contract and therefore he was not illegally dismissed. Petitioner, on the other hand, argued that his reinstatement should have been ordered by the Labor Arbiter since there was no proof that there were strained relations between the parties. He also questioned the deduction of six months pay from the back wages awarded to him and the failure of the Labor Arbiter to award him damages and attorney's fees. Petitioner likewise moved to dismiss PNCC's appeal contending that the supersedeas bond in the amount of P422,630.41 filed by the latter was insufficient considering that the Labor Arbiter's monetary award is P460,292.41. He also argued that the person who verified the appeal, Felix M. Erece, Jr., Personnel Services Department Head of PNCC, has no authority to file the same for and in behalf of PNCC.

On October 31, 2008, the NLRC rendered its Decision granting PNCC's appeal but dismissing that of petitioner. The dispositive portion reads:

WHEREFORE, premises considered, the appeal of respondent is GRANTED and the Decision dated 28 March 2006 is REVERSED and SET ASIDE.

A new Decision is hereby issued ordering respondent Philippine National Construction Corporation to pay completion bonus to complainant Roy Domingo Pasos in the amount of P25,000.

Complainant's appeal is DISMISSED for lack of merit.

SO ORDERED. ^[21]

As to the procedural issues raised by petitioner, the NLRC ruled that there was substantial compliance with the requirement of an appeal bond and that Mr. Erece, Jr., as head of the Personnel Services Department, is the proper person to represent PNCC. As to the substantive issues, the NLRC found that petitioner was employed in connection with certain construction projects and his employment was co-terminus with each project as evidenced by the Personnel Action Forms and the Termination Report submitted to the DOLE. It likewise noted the presence of the following project employment indicators in the instant case, namely, the duration of the project for which petitioner was engaged was determinable and expected completion was known to petitioner; the specific service that petitioner rendered in the projects was that of an accounting clerk and that was made clear to him and the service was connected with the projects; and PNCC submitted termination reports to the DOLE and petitioner's name was included in the list of affected employees.

Petitioner elevated the case to the CA via a petition for certiorari but the appellate court dismissed the same for lack of merit.

Hence this petition. Petitioner argues that the CA erred when it:

I.

SUSTAINED THAT THE AMOUNT OF THE BOND POSTED BY THE

RESPONDENTS FOR PURPOSES OF APPEAL WAS SUFFICIENT NOTWITHSTANDING THAT THE SAME IS LESS THAN THE ADJUDGED AMOUNT.

II.

SUSTAINED THAT FELIX M. ERECE, JR., HEAD OF RESPONDENT PNCC'S PERSONNEL SERVICE DEPARTMENT, IS DULY AUTHORIZED TO REPRESENT RESPONDENT IN THIS CASE NOTWITHSTANDING THE ABSENCE OF ANY BOARD RESOLUTION OR SECRETARY'S CERTIFICATE OF THE RESPONDENT STATING THAT INDEED HE WAS DULY AUTHORIZED TO INSTITUTE [THESE] PROCEEDINGS.

III.

SUSTAINED THAT PETITIONER WAS A PROJECT EMPLOYEE DESPITE THE FACT THAT RESPONDENT PNCC HAD NOT SUBMITTED THE REQUISITE TERMINATION REPORTS IN ALL OF THE ALLEGED PROJECTS WHERE THE PETITIONER WAS ASSIGNED.

IV.

SUSTAINED THAT THE PETITIONER IS A PROJECT EMPLOYEE DESPITE THE CIRCUMSTANCE THAT THE ACTUAL WORK UNDERTAKEN BY THE PETITIONER WAS NOT LIMITED TO THE WORK DESCRIBED IN HIS ALLEGED APPOINTMENT AS A PROJECT EMPLOYEE.

V.

FAILED TO FIND THAT AT SOME TIME, THE EMPLOYMENT OF THE PETITIONER WAS UNREASONABLY EXTENDED BEYOND THE DATE OF ITS COMPLETION AND AT OTHER TIMES THE SAME DID NOT BEAR A DATE OF COMPLETION OR THAT THE SAME WAS READILY DETERMINABLE AT THE TIME OF PETITIONER'S ENGAGEMENT THEREBY INDICATING THAT HE WAS NOT HIRED AS A PROJECT EMPLOYEE.

VI.

FAILED TO ORDER THE REINSTATEMENT OF THE PETITIONER BY FINDING THAT THERE WAS STRAINED RELATIONS BETWEEN THE PARTIES NOTWITHSTANDING THAT THE RESPONDENT NEVER EVEN ALLEGED NOR PROVED IN ITS PLEADINGS THE CIRCUMSTANCE OF STRAINED RELATIONS.

VII.

SUSTAINED THE FAILURE OF THE NATIONAL LABOR RELATIONS COMMISSION TO RECTIFY THE ERROR COMMITTED BY LABOR ARBITER LIBO-ON IN DEDUCTING THE EQUIVALENT OF SIX MONTHS PAY OF BACKWAGES DESPITE THE MANDATE OF THE LABOR CODE THAT WHEN THERE IS A FINDING OF ILLEGAL DISMISSAL, THE PAYMENT OF FULL BACKWAGES FROM DATE OF DIMISSAL [UP TO] ACTUAL