

EN BANC

[G.R. No. 179652, March 06, 2012]

PEOPLE'S BROADCASTING SERVICE (BOMBO RADYO PHILS., INC.), PETITIONER, VS. THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, THE REGIONAL DIRECTOR, DOLE REGION VII, AND JANDELEON JUEZAN, RESPONDENTS.

R E S O L U T I O N

VELASCO JR., J.:

In a Petition for Certiorari under Rule 65, petitioner People's Broadcasting Service, Inc. (Bombo Radyo Phils., Inc.) questioned the Decision and Resolution of the Court of Appeals (CA) dated October 26, 2006 and June 26, 2007, respectively, in C.A. G.R. CEB-SP No. 00855.

Private respondent Jandeleon Juezan filed a complaint against petitioner with the Department of Labor and Employment (DOLE) Regional Office No. VII, Cebu City, for illegal deduction, nonpayment of service incentive leave, 13th month pay, premium pay for holiday and rest day and illegal diminution of benefits, delayed payment of wages and noncoverage of SSS, PAG-IBIG and Philhealth.^[1] After the conduct of summary investigations, and after the parties submitted their position papers, the DOLE Regional Director found that private respondent was an employee of petitioner, and was entitled to his money claims.^[2] Petitioner sought reconsideration of the Director's Order, but failed. The Acting DOLE Secretary dismissed petitioner's appeal on the ground that petitioner submitted a Deed of Assignment of Bank Deposit instead of posting a cash or surety bond. When the matter was brought before the CA, where petitioner claimed that it had been denied due process, it was held that petitioner was accorded due process as it had been given the opportunity to be heard, and that the DOLE Secretary had jurisdiction over the matter, as the jurisdictional limitation imposed by Article 129 of the Labor Code on the power of the DOLE Secretary under Art. 128(b) of the Code had been repealed by Republic Act No. (RA) 7730.^[3]

In the Decision of this Court, the CA Decision was reversed and set aside, and the complaint against petitioner was dismissed. The dispositive portion of the Decision reads as follows:

WHEREFORE, the petition is **GRANTED**. The Decision dated 26 October 2006 and the Resolution dated 26 June 2007 of the Court of Appeals in C.A. G.R. CEB-SP No. 00855 are **REVERSED** and **SET ASIDE**. The Order of the then Acting Secretary of the Department of Labor and Employment dated 27 January 2005 denying petitioner's appeal, and the Orders of the Director, DOLE Regional Office No. VII, dated 24 May 2004 and 27

February 2004, respectively, are **ANNULLED**. The complaint against petitioner is **DISMISSED**.^[4]

The Court found that there was no employer-employee relationship between petitioner and private respondent. It was held that while the DOLE may make a determination of the existence of an employer-employee relationship, this function could not be co-extensive with the visitorial and enforcement power provided in Art. 128(b) of the Labor Code, as amended by RA 7730. The National Labor Relations Commission (NLRC) was held to be the primary agency in determining the existence of an employer-employee relationship. This was the interpretation of the Court of the clause "in cases where the relationship of employer-employee still exists" in Art. 128(b).^[5]

From this Decision, the Public Attorney's Office (PAO) filed a Motion for Clarification of Decision (with Leave of Court). The PAO sought to clarify as to when the visitorial and enforcement power of the DOLE be not considered as co-extensive with the power to determine the existence of an employer-employee relationship.^[6] In its Comment,^[7] the DOLE sought clarification as well, as to the extent of its visitorial and enforcement power under the Labor Code, as amended.

The Court treated the Motion for Clarification as a second motion for reconsideration, granting said motion and reinstating the petition.^[8] It is apparent that there is a need to delineate the jurisdiction of the DOLE Secretary vis-à-vis that of the NLRC.

Under Art. 129 of the Labor Code, the power of the DOLE and its duly authorized hearing officers to hear and decide any matter involving the recovery of wages and other monetary claims and benefits was qualified by the proviso that the complaint not include a claim for reinstatement, or that the aggregate money claims not exceed PhP 5,000. RA 7730, or an *Act Further Strengthening the Visitorial and Enforcement Powers of the Secretary of Labor*, did away with the PhP 5,000 limitation, allowing the DOLE Secretary to exercise its visitorial and enforcement power for claims beyond PhP 5,000. The only qualification to this expanded power of the DOLE was only that there still be an existing employer-employee relationship.

It is conceded that if there is no employer-employee relationship, whether it has been terminated or it has not existed from the start, the DOLE has no jurisdiction. Under Art. 128(b) of the Labor Code, as amended by RA 7730, the first sentence reads, "Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection." It is clear and beyond debate that an employer-employee relationship must exist for the exercise of the visitorial and enforcement power of the DOLE. The question now arises, may the DOLE make a determination of whether or not an employer-employee relationship exists, and if so, to what extent?

The first portion of the question must be answered in the affirmative.

The prior decision of this Court in the present case accepts such answer, but places a limitation upon the power of the DOLE, that is, the determination of the existence of an employer-employee relationship cannot be co-extensive with the visitorial and enforcement power of the DOLE. But even in conceding the power of the DOLE to determine the existence of an employer-employee relationship, the Court held that the determination of the existence of an employer-employee relationship is still primarily within the power of the NLRC, that any finding by the DOLE is merely preliminary.

This conclusion must be revisited.

No limitation in the law was placed upon the power of the DOLE to determine the existence of an employer-employee relationship. No procedure was laid down where the DOLE would only make a preliminary finding, that the power was primarily held by the NLRC. The law did not say that the DOLE would first seek the NLRC's determination of the existence of an employer-employee relationship, or that should the existence of the employer-employee relationship be disputed, the DOLE would refer the matter to the NLRC. The DOLE must have the power to determine whether or not an employer-employee relationship exists, and from there to decide whether or not to issue compliance orders in accordance with Art. 128(b) of the Labor Code, as amended by RA 7730.

The DOLE, in determining the existence of an employer-employee relationship, has a ready set of guidelines to follow, the same guide the courts themselves use. The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employer's power to control the employee's conduct.^[9] The use of this test is not solely limited to the NLRC. The DOLE Secretary, or his or her representatives, can utilize the same test, even in the course of inspection, making use of the same evidence that would have been presented before the NLRC.

The determination of the existence of an employer-employee relationship by the DOLE must be respected. The expanded visitorial and enforcement power of the DOLE granted by RA 7730 would be rendered nugatory if the alleged employer could, by the simple expedient of disputing the employer-employee relationship, force the referral of the matter to the NLRC. The Court issued the declaration that at least a prima facie showing of the absence of an employer-employee relationship be made to oust the DOLE of jurisdiction. But it is precisely the DOLE that will be faced with that evidence, and it is the DOLE that will weigh it, to see if the same does successfully refute the existence of an employer-employee relationship.

If the DOLE makes a finding that there is an existing employer-employee relationship, it takes cognizance of the matter, to the exclusion of the NLRC. The DOLE would have no jurisdiction only if the employer-employee relationship has already been terminated, or it appears, upon review, that no employer-employee relationship existed in the first place.

The Court, in limiting the power of the DOLE, gave the rationale that such limitation would eliminate the prospect of competing conclusions between the DOLE and the NLRC. The prospect of competing conclusions could just as well have been eliminated by according respect to the DOLE findings, to the exclusion of the NLRC,

and this We believe is the more prudent course of action to take.

This is not to say that the determination by the DOLE is beyond question or review. Suffice it to say, there are judicial remedies such as a petition for certiorari under Rule 65 that may be availed of, should a party wish to dispute the findings of the DOLE.

It must also be remembered that the power of the DOLE to determine the existence of an employer-employee relationship need not necessarily result in an affirmative finding. The DOLE may well make the determination that no employer-employee relationship exists, thus divesting itself of jurisdiction over the case. It must not be precluded from being able to reach its own conclusions, not by the parties, and certainly not by this Court.

Under Art. 128(b) of the Labor Code, as amended by RA 7730, the DOLE is fully empowered to make a determination as to the existence of an employer-employee relationship in the exercise of its visitorial and enforcement power, subject to judicial review, not review by the NLRC.

There is a view that despite Art. 128(b) of the Labor Code, as amended by RA 7730, there is still a threshold amount set by Arts. 129 and 217 of the Labor Code when money claims are involved, i.e., that if it is for Php 5,000 and below, the jurisdiction is with the regional director of the DOLE, under Art. 129, and if the amount involved exceeds Php 5,000, the jurisdiction is with the labor arbiter, under Art. 217. The view states that despite the wording of Art. 128(b), this would only apply in the course of regular inspections undertaken by the DOLE, as differentiated from cases under Arts. 129 and 217, which originate from complaints. There are several cases, however, where the Court has ruled that Art. 128(b) has been amended to expand the powers of the DOLE Secretary and his duly authorized representatives by RA 7730. In these cases, the Court resolved that the DOLE had the jurisdiction, despite the amount of the money claims involved. Furthermore, in these cases, the inspection held by the DOLE regional director was prompted specifically by a complaint. Therefore, the initiation of a case through a complaint does not divest the DOLE Secretary or his duly authorized representative of jurisdiction under Art. 128(b).

To recapitulate, if a complaint is brought before the DOLE to give effect to the labor standards provisions of the Labor Code or other labor legislation, and there is a finding by the DOLE that there is an existing employer-employee relationship, the DOLE exercises jurisdiction to the exclusion of the NLRC. If the DOLE finds that there is no employer-employee relationship, the jurisdiction is properly with the NLRC. If a complaint is filed with the DOLE, and it is accompanied by a claim for reinstatement, the jurisdiction is properly with the Labor Arbiter, under Art. 217(3) of the Labor Code, which provides that the Labor Arbiter has original and exclusive jurisdiction over those cases involving wages, rates of pay, hours of work, and other terms and conditions of employment, if accompanied by a claim for reinstatement. If a complaint is filed with the NLRC, and there is still an existing employer-employee relationship, the jurisdiction is properly with the DOLE. The findings of the DOLE, however, may still be questioned through a petition for certiorari under Rule 65 of the Rules of Court.

In the present case, the finding of the DOLE Regional Director that there was an