

## SECOND DIVISION

[ G.R. No. 186243, June 01, 2011 ]

**HACIENDA PRIMERA DEVELOPMENT CORPORATION and ANNA KATRINA E. HERNANDEZ, Petitioners, vs. MICHAEL S. VILLEGAS, Respondent.**

### RESOLUTION

**NACHURA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals (CA) Decision<sup>[1]</sup> dated November 27, 2008 and Resolution<sup>[2]</sup> dated February 3, 2009 in CA-G.R. SP No. 104847. The facts of the case are as follows: Petitioner Hacienda Primera Development Corporation (petitioner Hacienda) hired respondent Michael S. Villegas as General Manager of Amorita Resort. He was hired as a probationary employee for three (3) months. The employment contract contained the following terms and conditions:

1. Salary of P60,000.00 net per month for the first three (3) months and upon his regularization, P70,000.00 net per month.
2. Six (6) round trip tickets (TAG-MLA-TAG) per annum.
3. P2,500.00 cell phone bill allowance.
4. Fifteen (15) days vacation leave and fifteen (15) days sick leave upon permanency.
5. Pro-rated 13th month pay starting December 2006.
6. A 3-month probationary period starting January 200<sup>[7]</sup>.
7. Board and lodging in the resort.
8. Medical Insurance.<sup>[3]</sup>

Respondent started working for petitioner on January 1, 2007. On March 14, 2007, he received a call from Paramount Consultancy and Management telling him to report back to Manila. There, he learned that his services were terminated. He, thus, asked for a written notice of termination, but did not receive any.<sup>[4]</sup> Hence, the complaint for illegal dismissal. Petitioner Hacienda, on the other hand, stated that respondent was hired as probationary employee. It explained that respondent's services were terminated because he failed to qualify for regular employment. Specifically, it claimed that respondent failed to conceptualize and complete financial budgets, sales projection, room rates, website development, and marketing plan in coordination with the Sales and Marketing Manager.<sup>[5]</sup> On November 22, 2007,

Labor Arbiter (LA) Herminio V. Suelo rendered a decision<sup>[6]</sup> in favor of respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding complainant illegally dismissed. Accordingly, respondents are hereby ordered as follows:

1. To reinstate complainant to his former position without loss of seniority rights and other benefits;
2. To pay complainant his backwages from the time he was dismissed on March 15, 2007, until his actual reinstatement either physically or by payroll;
3. To pay complainant moral damages in the amount of Fifty Thousand Pesos (P50,000.00), and exemplary damages also in the amount of Fifty Thousand Pesos (P50,000.00);
4. To pay complainant attorney's fees equivalent to ten (10) percent of the total monetary award.

The reinstatement aspect of this Decision is immediately executory pursuant to Article 223 of the Labor Code, as amended. Respondents are therefore directed to submit a report of compliance thereof before this Office within ten (10) calendar days from receipt of this Decision. The Fiscal Examiner or the computation and examination unit of this Office is directed to compute the monetary aspect of the above-judgment awards which shall form part of this Decision. SO ORDERED.<sup>[7]</sup>

Aggrieved, petitioner Hacienda elevated the case to the National Labor Relations Commission (NLRC), which partially granted<sup>8</sup> the appeal, worded in this wise:

WHEREFORE, the foregoing premises considered, the instant appeal is **PARTIALLY GRANTED**. The charge of illegal dismissal is **DISMISSED** for lack of merit. Accordingly, the Decision is **MODIFIED** to order the respondents-appellants to pay his salary corresponding to the unexpired portion of his contract of employment (March 16-31, 2007) in the amount of P30,000.00. SO ORDERED.<sup>[9]</sup>

In a Decision<sup>[10]</sup> dated November 27, 2008, the CA set aside the above NLRC decision and reinstated that of the LA. The dispositive portion of the assailed CA Decision is quoted below for easy reference:

WHEREFORE, the instant Petition is hereby GRANTED. The Decision of the NLRC is hereby SET ASIDE. Accordingly, the Decision of the Labor Arbiter is REINSTATED with the MODIFICATION that since reinstatement is no longer possible due to strained relations between the parties, a separation pay of one month for every year of service is hereby decreed. In this connection, the instant case is hereby remanded to the Labor Arbiter for the computation of the said monetary award. SO ORDERED.

<sup>[11]</sup>

Petitioner Hacienda's motion for reconsideration was denied in a Resolution<sup>12</sup> dated February 3, 2009. Hence, the instant petition with the following assigned errors:

(A) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT WHEN IT RULED THAT RESPONDENT WAS ILLEGALLY DISMISSED;

(B) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT IN REINSTATING THE DECISION OF THE LABOR ARBITER AWARDING UNLIMITED BACKWAGES BEYOND THE RESPONDENT'S PROBATIONARY EMPLOYMENT;

(C) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT WHEN IT RULED THAT RESPONDENT IS ENTITLED TO MORAL AND EXEMPLARY DAMAGES;

(D) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT WHEN IT RULED THAT RESPONDENT IS ENTITLED TO ATTORNEY'S FEES;

(E) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT WHEN IT ORDERED THE PAYMENT OF SEPARATION PAY; AND

(F) THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT WHEN IT DECIDED THE PETITION OF RESPONDENT ALTHOUGH THE NLRC'S RESOLUTION DATED 22 APRIL 2008 IS ALREADY FINAL AND EXECUTORY SINCE RESPONDENT'S MOTION FOR RECONSIDERATION, CONTRARY TO THE RULES OF PROCEDURE OF THE NLRC, IS UNVERIFIED.<sup>[13]</sup>

The petition is unmeritorious. The Labor Code and its Implementing Rules govern probationary employment.<sup>14</sup>

#### LABOR CODE

Art. 281. *Probationary Employment*.—Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

#### LABOR CODE, Implementing Rules of Book VI, Rule I, Section 6

Sec. 6. *Probationary employment*. There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.