

THIRD DIVISION

[G.R. No. 174209, August 25, 2009]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
PETITIONER, VS. RIZALINA RAUT, LEILA EMNACE AND GINA
CAPISTRANO, RESPONDENTS.**

D E C I S I O N

NACHURA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision^[1] in CA-GR SP. No. 85829 which affirmed the National Labor Relations Commission's (NLRC's) dismissal^[2] of petitioner Philippine Long Distance Telephone Company's Memorandum of Appeal for failure to attach thereto the requisite Certificate of Non-Forum Shopping.

The facts, as summarized by the CA, are as follows:

This case was originally filed on December 17, 1996 by Rizalina Raut and [Leila] Emnace against Philippine Long Distance Telephone Company (PLDT for brevity) for illegal dismissal and non-payment of salaries, overtime pay, night shift differential, 13th month pay, service incentive leave, backwages with moral damages and attorney's fees. Gina Capistrano followed suit by filing a similar case on January 18, 1997. These cases were consolidated by the Labor Arbiter on February 25, 1997 due to similarity of facts and issues involved.

In the complaint, signed and verified by the respondents, they alleged that they were illegally dismissed on November 30, 1996 and December 16, 1996 respectively.

In the decision of the Labor Arbiter promulgated on July 30, 1997, it reinstated the respondents x x x to their former position as telephone operators or if not feasible anymore to another equal position without loss of seniority rights and benefits and to pay the following backwages which are subject to recomputation up to the date of the finality of the decision as follows:

- | | |
|--------------------|--------------|
| 1. Rizalina Raut | - P32,505.00 |
| 2. [Leila] Emnace | - P32,505.00 |
| 3. Gina Capistrano | - P34,320.00 |

P99,330.00

Soon after, the respondents were reinstated on December 16, 1998, but

allegedly continued to be treated as temporary employees of the petitioner.

Petitioner appealed the decision, alleging grave abuse of discretion on the part of the Honorable Labor Arbiter, insisting that the respondents were never employees of the petitioner but that of independent contractor, Peerless Integrated Services, Inc.

In respondents' Answer to the Appeal, respondents argued that their functions were no different from those performed by the regular employees. They aver that they were trained by petitioner to become Traffic Operator, a position that is categorized as technical. Now, if they were trained to be skilled workers, how come they were extended only contractual employment of ten (10) months? Aside from that, respondents maintained that the claim of the petitioner that their arrangement with Peerless to supply it with various types of workers "in order to augment its present workforce" is but a scheme to subvert their tenurial security. According to respondents, petitioner expressly admits that Peerless provides only the workers. Thus, its contract with the former is one of "labor only" contracting, which is specifically prohibited under Sec. 9 (b) Rule VIII of the Omnibus Rules in relation to Article 106 of the Labor Code of the Philippines.

Subsequently, on April 30, 1998, the NLRC rendered a Decision affirming with modification the Decision of the Honorable Labor Arbiter. In addition to those already granted, petitioner x x x is further ordered to pay respondents their overtime pay, nightshift differential pay, service incentive leave pay and 13th month pay.

Petitioner filed a motion for reconsideration but the same was denied in a Resolution promulgated by the NLRC dated September 25, 1998.

Consequently, petitioner filed a petition for *certiorari* before the Court of Appeals. However, the court rendered a Decision dated September 24, 1999, the dispositive portion of which reads as follows:

"Wherefore, with the modification that the 13th month pay for respondents Raut and Emnace for the period August 16, 1995 to June 15, 1996 and for respondent Capistrano for the period of August 1, 1995 to May 31, 1996 should be deducted from the computation of the awards to private respondents, the assailed Decision of the National Labor Relations Commission is AFFIRMED."

Petitioner filed a Motion for Reconsideration, which was denied by the court. In effect, its aforesaid Decision became final and executory on March 26, 2000 per Entry of Judgment.

On April 24, 2002, respondents filed a Motion for Issuance of Writ of Execution which was granted by the Labor Arbiter in an Order dated June

21, 2002, the dispositive portion of which viz.:

"Wherefore, let a writ of execution be issued for the enforcement of the following awards:

- | | |
|--------------------|---------------|
| 1. Rizalina Raut | - P354,535.36 |
| 2. [Leila] Emnace | - P354,535.36 |
| 3. Gina Capistrano | - P354,535.36 |

P1,063,606.00"^[3]

Aggrieved, petitioner appealed the order to the NLRC which, as previously adverted to, dismissed petitioner's Memorandum of Appeal for failure to attach a Certificate of Non-Forum Shopping.

Undaunted, petitioner filed a petition for *certiorari* before the CA alleging grave abuse of discretion in the NLRC's dismissal of its appeal. Once again, petitioner fared no better in the CA; its petition for *certiorari* was denied due course.

Indefatigably, petitioner comes before us on appeal by *certiorari* raising the following issues for our resolution:

1. WHETHER x x x THE DECISION DATED APRIL 18, 2006 OF THE COURT OF APPEALS, WHICH AFFIRMED RESOLUTION DATED JANUARY 15, 2004 AND RESOLUTION DATED JULY 26, 2004, BOTH ISSUED BY THE NLRC, IS IN ACCORDANCE WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.
2. MEMORANDUM WARRANTS THE DISMISSAL OF THE PETITIONER'S APPEAL FROM THE ORDER DATED JUNE 21, 2002 OF THE LABOR ARBITER TO THE NLRC.
3. WHETHER x x x THE ORDER DATED JUNE 21, 2002 OF LABOR ARBITER ERNESTO F. CARREON DIRECTING THE ISSUANCE OF A WRIT OF EXECUTION FOR THE ENFORCEMENT OF THE AWARD OF [P]354,535.36 TO EACH OF THE RESPONDENTS, WHICH WAS AFFIRMED *IN TOTO* BY THE NLRC'S DECISION DATED JANUARY 15, 2004[,] AND WHICH[,] IN TURN[,] WAS AFFIRMED BY THE COURT OF APPEALS DECISION DATED APRIL 18, 2006, IS NULL AND VOID.

^[4]

The definitive issue boils down to whether the CA erred in affirming the NLRC's dismissal of petitioner's appeal for failing to attach a Certificate of Non-Forum Shopping.

We find the petition bereft of merit. We note that petitioner deftly brought to the fore the validity of the Labor Arbiter's order of execution. However, even on this issue, the appeal lacks merit.