

SECOND DIVISION

[G.R. No. 165482, July 23, 2008]

SOCIAL SECURITY COMMISSION AND APOLONIO LAMBOSO, PETITIONERS, VS. FAR S. ALBA, RESPONDENT.

D E C I S I O N

TINGA, J.:

Assailed in this Petition for Review on Certiorari^[1] dated 12 November 2004 is the Decision^[2] dated 20 July 2004 of the Court of Appeals in CA-G.R. SP No. 72607 and its Resolution^[3] dated 30 September 2004 reversing the Resolution^[4] dated 28 November 2001 of the Social Security Commission (the Commission) in SSC Case No. 12-14618-96.

Following are the antecedents.

Sometime in 1991, petitioner Apolonio Lamboso (Lamboso) filed a claim for retirement benefit before the Social Security System (SSS). However, his claim was denied on the ground that he could not qualify for monthly pension under Republic Act (R.A.) No. 1161^[5] (the Social Security Act of 1954) as he then had only thirty-nine (39) paid contributions. On 11 December 1996, Lamboso appealed the denial of his claim by filing a petition before the Commission wherein he alleged that he should be entitled to monthly retirement pension. He prayed for the adjustment of the date of his Social Security (SS) coverage and for the remittance of his delinquent monthly contribution.^[6] On 28 November 2001, the Commission rendered its resolution, to wit:

Petitioner (Apolonio Lamboso) herein alleged that he worked in Hda. La Roca (owned by Far Alba) from 1960 to 1973 as '*cabo*', in Hda. Alibasao from 1973 to 1979 as overseer and in Hda. Kamandag from 1979 to 1984; that the latter two (2) haciendas are both owned by Ramon S. Benedicto; and that when he filed a claim for retirement pension benefit with the SSS, however, the same was denied on the ground that he had 39 monthly contributions to his credit.

Private respondent Ramon S. Benedicto alleged that he was only a lessee of Hdas. Albasao and Kamandag; that when he took over as lessee thereof, there was no available records to support the petitioner's claim of employment; and that he, therefore, prays that the petition be dismissed for lack of cause of action.

Respondent Far Alba (Hda. La Roca) was *motu proprio* declared in default on November 14, 1997 for failure to file his answer. On the other hand, public respondent SSS merely cited the provisions of Section 8 (d), 9, 12-B, 22 (a) and (b) and 24 (a) and (b) of R.A. 1161, as amended, by

way of responsive pleading.

The petitioner reiterated the averments in his pleading in the Position Paper which he filed on November 20, 1998. He further averred that he received from Far Alba a monthly salary of P45.00 from 1960 to 1965 and P180.00 from 1965 to 1973 and from employer Ramon S. Benedicto, a monthly salary of P500.00 from 1973 to 1984; and that he was reported to the SSS for coverage in 1973 and only a total of 39 monthly contributions were remitted in his name.

In its Position Paper, public respondent SSS avers that Apolonio Lamboso, whose date of birth is April 10, 1930, was reported for SS coverage, effective April 1, 1970 by employer Far Alba (ID No. 07-0869300) on December 11, 1972; that he was, likewise, reported for SSS coverage effective May 1, 1980, by employer Kamandag Agri & Dev. Corp. (ID No. 07-2024250-4) on September 1, 1980; and that Apolonio Lamboso has only 39 monthly contributions (remitted in his favor by Far alba) for the period January 1970 to March 1973, but none under Kamandag Agri. Dev. Corp.

Private respondent Ramon Benedicto, in his Position Paper dated September 6, 2000, avers that the petitioner was employed by him from 1973 to 1984 (1973 to 1979 in Hda. Alibasao and from 1979 to 1984 in Hda. Kamandag); and that all of his employment records were already destroyed and damaged by termites.

In the testimonial evidence for the petitioner presented on March 17 and June 15, 1999 and August 10, 2000, witnesses Rodolfo Sales, Falconeri Fierro and Romulo Fierro collectively corroborated the petitioner's employment with Far Alba from 1960 to April 1973 in Hda. La Roca and with employer Ramon Benedicto in Hdas. Alibasao and Kamandag from 1973 to 1984.

The failure on the part of respondent Far Alba to file his responsive pleading to the petition filed by petitioner Apolonio Lamboso strongly indicates lack or absence of evidence, by way of rebuttal, to the positive assertion of the petitioner regarding his employment with the former from 1960 to April 1973. Besides, defrauding respondent Far Alba reported Apolonio Lamboso to the SSS for coverage effective April 1, 1970 and this act of reporting is already an incontrovertible proof of employment.

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WHEREFORE, PREMISES CONSIDERED, this Commission hereby orders:

1. Respondent Far Alba to pay to the SSS the delinquent monthly contributions of Apolonio Lamboso from June 18, 1960 to April 1973 (based on his monthly salary of P45.00 from 1960 to 1965 and P180.00 from 1966 to April 1973) in the amount of P1,115.00, the 3% per month penalty due thereon in the amount of P12,387.57, computed as of December 5, 2001 and the damages under Section

24 (b) of RA 1161, as amended, in the amount of P4,895.38; and

2. Respondent Ramon Benedicto to pay to SSS the delinquent monthly contributions due the petitioner for the period May 1973 to 1984 (based on his monthly salary of P500.00) in the amount of P8,865.60, the 3 % per month penalty due thereon in the amount of P65,879.70, computed as of December 5, 2001 and that damages under Section 24 (b) of RA 1161, as amended, in the amount of P26,919.75

Should the respondents pay their respective contribution liabilities within sixty (60) days from receipt hereof, their other liabilities for the 3% per month penalty are deemed condoned pursuant to SSC Resolution No. 982-S.99.

The SSS, on the other hand, is ordered to pay Apolonio Lamboso his retirement benefit upon the filing of the claim therefore, subject to existing rules and regulations, and to inform this Commission of its compliance herewith.^[7]

Herein respondent Far Alba moved for reconsideration of the Commission's resolution, citing lack of notice and denial of due process. The Commission denied the motion in an Order^[8] dated 26 June 2002 stating as follows:

We find respondent Far Alba's motion for reconsideration utterly bereft of merit as the case records clearly show that summons was served upon herein respondent through his wife, Tina Alba, on September 15, 1997 as herein respondent was not at his residence at the time of service. After the lapse of the reglementary period within which to file his responsive pleading, this Commission *motu proprio* declared him in default on November 14, 1997. Thus, when respondent Far Alba failed to file a motion to lift the default order until the promulgation of the questioned Resolution, he could not argue that he was deprived of due process that would warrant the reversal of the judgment.^[9]

Alba subsequently filed a Petition for Review^[10] under Rule 43 of the 1997 Rules of Civil Procedure before the Court of Appeals assigning the following errors allegedly committed by the Commission: (1) the Order of the Commission was rendered in violation of his constitutional rights to due process and equal protection; (2) he was not obligated by law to remit contributions to the SSS prior to 1970 and after 1973 in the absence of employer-employee relationship; and (3) Lamboso's claim had already prescribed.^[11]

The Court of Appeals reversed and set aside both the resolution and the order of the Commission. It held that Far Alba cannot be considered as an employer of Lamboso prior to 1970 because as administrator of the family-owned *hacienda*, he is not an employer under Section 8 (c) of the Social Security Act of 1954 who carries on a "trade or business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment,"^[12] unlike under Article 212 (e) of the Labor Code which defines an employer as, among others, any person acting directly or indirectly in the interest of the employer. As such, the appellate court declared, Far Alba had no obligation to remit to SSS the

monthly contributions of Lamboso prior to 1970. It also held that inasmuch as Far Alba had duly remitted Lamboso's monthly contributions to the SSS for the period of January 1970 to March 1973, which totaled 39 contributions, he as Lamboso's employer should be absolved from the adjudged liability.^[13]

Furthermore, in its Resolution^[14] denying the Commission's motion for reconsideration, the Court of Appeals stated that since it was Arturo Alba, Sr., Far Alba's father, who had failed to remit the SS contributions prior to 1970, Lamboso should have asserted his claim before the estate proceedings of his deceased employer in accordance with Section 5, Rule 86 of the Rules of Court.^[15]

Now, before the Court, the Commission insists that the term "employer" under the Social Security Act of 1954 may be applied to Far Alba, the administrator-son of the owner, Arturo Alba, Sr., who is directly and actively involved in the operation of the agricultural undertaking. The Commission likewise asserts that a petition for payment of SS contributions and SS retirement benefit may not be filed before the estate proceedings of the deceased employer as a claim of this nature is not a money claim arising from contract, express or implied, entered into by the decedent in his lifetime but is rather akin to claims for taxes which may be enforced against the decedent's executor, administrator or legal heirs within the prescriptive period of twenty (20) years as provided for in Section 22 (b) of R.A. No. 8282 (the Social Security Act of 1997).^[16]

In his Memorandum^[17] dated 26 May 2006, Far Alba stresses that he was not Lamboso's employer prior to 1970 and that he neither had been the administrator of the *hacienda* because in 1960, he was in Manila studying law and was in fact admitted into the practice of the law the following year.^[18] He agrees with the ruling of the Court of Appeals that the claim for the payment of SS contributions should have been filed before the estate proceedings of Arturo Alba, Sr.^[19]

There is merit in the petition.

At the outset, the question of whether Far Alba had been Lamboso's employer, under the Social Security Act of 1954, prior to 1970 is a question of fact. And while generally, factual issues are not within the province of the Supreme Court, the rule is not without exception. Where there are conflicting and contradictory findings of fact, this Court will not hesitate to scrutinize the records to determine the facts for itself.^[20]

Section 8 (c), Social Security Act of 1954 (as amended by Presidential Decree [P.D.] No. 1202 and P.D. No. 1636) defines an employer as "any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade or business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government." Section 8 (d) defines an employee as "any person who performs services for an employer in which either or both mental and physical efforts are used and who receives compensation for such services where there is an employer-employee relationship."^[21]

Far Alba denies having been Lamboso's employer before 1970. More than that, he denies having served as the *hacienda's* administrator before that year. These disavowals, however, are undermined by Lamboso's clear and direct testimony that Far Alba served as the *hacienda's* administrator from 1960 to 1965 and solely ran the place from 1965 onwards. Pertinently, Lamboso testified as follows:

ATTY. BAYLIN:

Q: And how many years did you work with Far Alba?

A: Thirteen (13) years.

Q: How many hectares is Hda. La Roca?

A: The total area is 318 hectares, however, the 214 was the area left to the two brothers.

Q: From whom did you receive your salary?

A: Far Alba himself.

Q: Personally?

A: Yes.

Q: You said that you worked with Far Alba from 1960 to 1973 and you worked with Ramon Benedicto from 1974 to 1985, how much was your salary when you worked with Ramon Benedicto?

A: Five Hundred Pesos (P500.00) a month.

Q: Were there deductions made from your salary?

A: Yes, for SSS and medicare - P45.00 a month. ^[22]

ATTY. LOCSIN:

Q: Since this hacienda was originally owned by Arturo Alba, did you not work with Arturo Alba?

A: I had worked with Arturo Alba since in [*sic*] 1960 he was the one who was working the hacienda together with Far Alba, who was his son.

Q: In what capacity was Far Alba working with Arturo Alba?

A: He was the administrator.

Q: You are saying then that your employer was Arturo Alba from 1960 to 1969 or sometime in 1970 when the property was partitioned?

A: My employers were both Arturo Alba and Far Alba from 1960 to 1965 because it was Far Alba who admitted me to work in the hacienda. In 1965[,] Arturo Alba got sick and the hacienda was ran solely by Far Alba.

Q: Let us make it clear. From 1960 to 1965 Far Alba was merely the administrator of the hacienda, is that correct?

A: Yes. ^[23]

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