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SECOND DIVISION

[G.R. No. 152894, August 17, 2007]

CENTURY CANNING CORPORATION, PETITIONER, VS. COURT OF APPEALS AND GLORIA C. PALAD, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review[1] of the Decision[2] dated 12 November 2001 and the Resolution dated 5 April 2002 of the Court of Appeals in CA-G.R. SP No. 60379.

The Facts

On 15 July 1997, Century Canning Corporation (petitioner) hired Gloria C. Palad (Palad) as "fish cleaner" at petitioner's tuna and sardines factory. Palad signed on 17 July 1997 an apprenticeship agreement[3] with petitioner. Palad received an apprentice allowance of P138.75 daily. On 25 July 1997, petitioner submitted its apprenticeship program for approval to the Technical Education and Skills Development Authority (TESDA) of the Department of Labor and Employment (DOLE). On 26 September 1997, the TESDA approved petitioner's apprenticeship program.[4]

According to petitioner, a performance evaluation was conducted on 15 November 1997, where petitioner gave Palad a rating of N.I. or "needs improvement" since she scored only 27.75% based on a 100% performance indicator. Furthermore, according to the performance evaluation, Palad incurred numerous tardiness and absences. As a consequence, petitioner issued a termination notice[5] dated 22 November 1997 to Palad, informing her of her termination effective at the close of business hours of 28 November 1997.

Palad then filed a complaint for illegal dismissal, underpayment of wages, and non-payment of pro-rated 13th month pay for the year 1997.

On 25 February 1999, the Labor Arbiter dismissed the complaint for lack of merit but ordered petitioner to pay Palad her last salary and her pro-rated 13th month pay. The dispositive portion of the Labor Arbiter's decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that the complaint for illegal dismissal filed by the complainant against the respondents in the above-entitled case should be, as it is hereby DISMISSED for lack of merit. However, the respondents are hereby ordered to pay the complainant the amount of ONE THOUSAND SIX HUNDRED THIRTY-TWO PESOS (P1,632.00), representing her last

> salary and the amount of SEVEN THOUSAND TWO HUNDRED TWENTY EIGHT (P7,228.00) PESOS representing her prorated 13th month pay.
>
> All other issues are likewise dismissed.
>
> SO ORDERED.[6]

On appeal, the National Labor Relations Commission (NLRC) affirmed with modification the Labor Arbiter's decision, thus:

> WHEREFORE, premises considered, the decision of the Arbiter dated 25 February 1999 is hereby MODIFIED in that, in addition, respondents are ordered to pay complainant's backwages for two (2) months in the amount of P7,176.00 (P138.75 x 26 x 2 mos.). All other dispositions of the Arbiter as appearing in the dispositive portion of his decision are AFFIRMED.
>
> SO ORDERED.[7]

Upon denial of Palad's motion for reconsideration, Palad filed a special civil action for *certiorari* with the Court of Appeals. On 12 November 2001, the Court of Appeals rendered a decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the questioned decision of the NLRC is hereby SET ASIDE and a new one entered, to wit:
>
> a. finding the dismissal of petitioner to be illegal;
>
> b. ordering private respondent to pay petitioner her underpayment in wages;
>
> c. ordering private respondent to reinstate petitioner to her former position without loss of seniority rights and to pay her full backwages computed from the time compensation was withheld from her up to the time of her reinstatement;
>
> d. ordering private respondent to pay petitioner attorney's fees equivalent to ten (10%) per cent of the monetary award herein; and
>
> e. ordering private respondent to pay the costs of the suit.
>
> SO ORDERED.[8]

The Ruling of the Court of Appeals

The Court of Appeals held that the apprenticeship agreement which Palad signed was not valid and binding because it was executed more than two months before the TESDA approved petitioner's apprenticeship program. The Court of Appeals cited *Nitto Enterprises v. National Labor Relations Commission,*[9] where it was held that prior approval by the DOLE of the proposed apprenticeship program is a condition *sine qua non* before an apprenticeship agreement can be validly entered into.

The Court of Appeals also held that petitioner illegally dismissed Palad. The Court of Appeals ruled that petitioner failed to show that Palad was properly apprised of the required standard of performance. The Court of Appeals likewise held that Palad was not afforded due process because petitioner did not comply with the twin requirements of notice and hearing.

The Issues

Petitioner raises the following issues:

1. WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PRIVATE RESPONDENT WAS NOT AN APPRENTICE; and

2. WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER HAD NOT ADEQUATELY PROVEN THE EXISTENCE OF A VALID CAUSE IN TERMINATING THE SERVICE OF PRIVATE RESPONDENT.[10]

The Ruling of the Court

The petition is without merit.

Registration and Approval by the TESDA of Apprenticeship Program Required Before Hiring of Apprentices

The Labor Code defines an apprentice as a worker who is covered by a written apprenticeship agreement with an employer.[11] One of the objectives of Title II (Training and Employment of Special Workers) of the Labor Code is to establish apprenticeship standards for the protection of apprentices.[12] In line with this objective, Articles 60 and 61 of the Labor Code provide:

> ART. 60. *Employment of apprentices.* **--Only employers in the highly technical industries may employ apprentices and only in apprenticeable occupations approved by the Minister of Labor and Employment.** (Emphasis supplied)
>
> ART. 61. *Contents of apprenticeship agreements.* -- Apprenticeship agreements, including the wage rates of apprentices, shall conform to the rules issued by the Minister of Labor and Employment. The period of apprenticeship shall not exceed six months. **Apprenticeship agreements providing for wage rates below the legal minimum wage, which in no case shall start below 75 percent of the applicable minimum wage, may be entered into only in accordance with apprenticeship programs duly approved by the Minister of Labor and Employment.** The Ministry shall develop standard model programs of apprenticeship. (Emphasis supplied)

In *Nitto Enterprises v. National Labor Relations Commission,*[13] the Court cited Article 61 of the Labor Code and held that an apprenticeship program should first be approved by the DOLE before an apprentice may be hired, otherwise the person hired will be considered a regular employee. The Court held:

In the case at bench, the apprenticeship agreement between petitioner and private respondent was executed on May 28, 1990 allegedly employing the latter as an apprentice in the trade of "care maker/molder." On the same date, an apprenticeship program was prepared by petitioner and submitted to the Department of Labor and Employment. However, the apprenticeship agreement was filed only on June 7, 1990. Notwithstanding the absence of approval by the Department of Labor and Employment, the apprenticeship agreement was enforced the day it was signed.

Based on the evidence before us, petitioner did not comply with the requirements of the law. **It is mandated that apprenticeship agreements entered into by the employer and apprentice shall be entered only in accordance with the apprenticeship program duly approved by the Minister of Labor and Employment.**

Prior approval by the Department of Labor and Employment of the proposed apprenticeship program is, therefore, a condition *sine qua non* before an apprenticeship agreement can be validly entered into.

The act of filing the proposed apprenticeship program with the Department of Labor and Employment is a preliminary step towards its final approval and does not instantaneously give rise to an employer-apprentice relationship.

Article 57 of the Labor Code provides that the State aims to "establish a national apprenticeship program through the participation of employers, workers and government and non-government agencies" and "to establish apprenticeship standards for the protection of apprentices." To translate such objectives into existence, prior approval of the DOLE to any apprenticeship program has to be secured as a condition *sine qua non* before any such apprenticeship agreement can be fully enforced. The role of the DOLE in apprenticeship programs and agreements cannot be debased.

Hence, since the apprenticeship agreement between petitioner and private respondent has no force and effect in the absence of a valid apprenticeship program duly approved by the DOLE, private respondent's assertion that he was hired not as an apprentice but as a delivery boy ("kargador" or "pahinante") deserves credence. He should rightly be considered as a regular employee of petitioner as defined by Article 280 of the Labor Code x x x. (Emphasis supplied)[14]

Republic Act No. 7796[15] (RA 7796), which created the TESDA, has transferred the authority over apprenticeship programs from the Bureau of Local Employment of the DOLE to the TESDA.[16] RA 7796 emphasizes TESDA's approval of the apprenticeship program as a pre-requisite for the hiring of apprentices. Such intent is clear under Section 4 of RA 7796:

SEC. 4. *Definition of Terms*. -- As used in this Act:

x x x

j) "**Apprenticeship**" training within employment with compulsory related theoretical instructions involving a **contract between an apprentice and an employer on an approved apprenticeable occupation;**

k) "**Apprentice**" is a person undergoing **training for an approved apprenticeable occupation** during an established period assured by an apprenticeship agreement;

l) "**Apprentice Agreement**" is a contract wherein a prospective employer binds himself to train the apprentice who in turn accepts the terms of **training for a recognized apprenticeable occupation emphasizing the rights, duties and responsibilities of each party;**

m) "**Apprenticeable Occupation**" is an occupation officially endorsed by a tripartite body and **approved for apprenticeship by the Authority [TESDA];** (Emphasis supplied)

In this case, the apprenticeship agreement was entered into between the parties before petitioner filed its apprenticeship program with the TESDA for approval. Petitioner and Palad executed the apprenticeship agreement on 17 July 1997 wherein it was stated that the training would start on 17 July 1997 and would end approximately in December 1997.[17] On 25 July 1997, petitioner submitted for approval its apprenticeship program, which the TESDA subsequently approved on 26 September 1997.[18] Clearly, the apprenticeship agreement was enforced even before the TESDA approved petitioner's apprenticeship program. Thus, the apprenticeship agreement is void because it lacked prior approval from the TESDA.

The TESDA's approval of the employer's apprenticeship program is required before the employer is allowed to hire apprentices. Prior approval from the TESDA is necessary to ensure that only employers in the highly technical industries may employ apprentices and only in apprenticeable occupations.[19] Thus, under RA 7796, employers can only hire apprentices for apprenticeable occupations which must be officially endorsed by a tripartite body and approved for apprenticeship by the TESDA. This is to ensure the protection of apprentices and to obviate possible abuses by prospective employers who may want to take advantage of the lower wage rates for apprentices and circumvent the right of the employees to be secure in their employment.

The requisite TESDA approval of the apprenticeship program prior to the hiring of apprentices was further emphasized by the DOLE with the issuance of Department Order No. 68-04 on 18 August 2004. Department Order No. 68-04, which provides the guidelines in the implementation of the Apprenticeship and Employment Program of the government, specifically states that **no enterprise shall be allowed to hire apprentices unless its apprenticeship program is registered and approved by TESDA.**[20]

Since Palad is not considered an apprentice because the apprenticeship agreement was enforced before the TESDA's approval of petitioner's apprenticeship program, Palad is deemed a regular employee performing the job of a "fish cleaner." Clearly,