

## THIRD DIVISION

[ G.R. No. 170244, November 28, 2007 ]

**ILOILO LA FILIPINA UYGONGCO CORPORATION, PETITIONER,  
VS, HON. COURT OF APPEALS; CEBU CITY, HON. PATRICIA A.  
STO. TOMAS, IN HER CAPACITY AS SECRETARY, DEPARTMENT OF  
LABOR AND EMPLOYMENT; AND LA FILIPINA UYGONGCO  
CORPORATION WORKERS, RESPONDENTS.**

### R E S O L U T I O N

**NACHURA, J.:**

Before this Court is a Petition<sup>[1]</sup> for *Certiorari* under Rule 65 of the Rules of Civil Procedure, seeking to nullify the respondent Court of Appeals (CA) Decision<sup>[2]</sup> dated December 2, 2004 which affirmed *in toto* the Order<sup>[3]</sup> of the Department of Labor and Employment (DOLE) Acting Secretary Manuel G. Imson (acting Secretary Imson) dated June 4, 2003 and the Order<sup>[4]</sup> of respondent DOLE Secretary Patricia A. Sto. Tomas (DOLE Secretary) dated September 18, 2003.

Petitioner Iloilo La Filipina Uygongco Corporation (petitioner) is a domestic corporation engaged in trading and trucking businesses. Petitioner is the employer of the private respondents La Filipina Uygongco Corporation Workers (respondents). Petitioner claims that respondents are "pakyaw" workers, hence, not entitled to the full enjoyment of the benefits provided in the labor standards under the Labor Code.

Sometime in October 1997, the drivers and motor pool personnel of petitioner formed the Iloilo La Filipina Uygongco Corporation Labor Union (ILFUCLU) and said union was registered with the DOLE on November 14, 1997.<sup>[5]</sup> ILFUCLU President and herein respondent, Ronaldo Payda, verbally requested the DOLE Region VI Office<sup>[6]</sup> to conduct a routine labor inspection as the ILFUCLU believed that they were receiving wages below the minimum mandated by law, among others. Sometime in December 1997, respondents, who are officers and members of ILFUCLU, filed a Complaint for Underpayment of Wages, Non-payment of Holiday Pay, Overtime Pay, Rest day Pay, Nightshift Differential and Service Incentive Leave Pay before the DOLE Region VI Office. On March 26, 1998 a labor routine inspection was conducted. On October 6, 1998, the Labor Inspector held that petitioner did not violate any provision on labor standards which the DOLE Regional Director in his Order<sup>[7]</sup> dated December 1, 1998 affirmed on the following grounds, to wit:

1. The truck drivers concerned are non-agricultural field personnel and they are paid by results. Hence, they are not covered by hours of work under paragraph (e) and (f), Rule I, Rule II, Rule IV, & Rule V of Book III of the Labor Code;

2. The basis of their salary is "per trip" at a minimum of P50.00 per trip and on the average they made at 4 to 5 trips per day they earned from P200.00 to P250.00 per day which is over the minimum wage; and
3. They are given P70.00 food allowance if they report for work which is not required by law.

On appeal, acting Secretary Imson in his Order dated June 4, 2003, reversed and set aside these findings, holding that respondents are regular employees of the petitioner based on the parameters set by law in the determination of employer-employee relationship and are, therefore, entitled to said monetary benefits. He further held that petitioner is engaged in the trucking business; hence, respondents as truck drivers perform activities which are usually necessary and desirable to the said business. Lastly, the DOLE Region VI Office should not have merely relied on the pro-forma affidavits of the respondents and based the inspection results on company records. The dispositive portion of the Order reads:

**WHEREFORE**, the Order dated December 01, 1998 is hereby SET ASIDE and VACATED and a new one is entered finding the appellee, Iloilo La Filipina Uycongco (sic) Corporation liable for underpayment of wages, non-payment of holiday pay, rest day pay and overtime pay.

Let the case be **REMANDED** to the DOLE-Regional Office VI for the appropriate computation of the workers' individual entitlements as above-stated.

All other claims of appellants are **DISMISSED** for lack of merit.

**SO ORDERED.**<sup>[8]</sup>

Petitioner filed a Motion for Reconsideration. On September 18, 2003, the DOLE Secretary denied petitioner's Motion for Reconsideration for its failure to establish and substantiate its allegation of paying the minimum wage to respondents and for lack of merit.<sup>[9]</sup>

Aggrieved, petitioner filed a petition<sup>[10]</sup> for *certiorari* before the CA which eventually affirmed the DOLE Secretary's ruling. The CA held that respondents' employment status cannot be based solely on their pro-forma affidavits manifesting that they are "pakyaw" employees considering that they abandoned the same in a subsequent Joint Affidavit. Moreover, the CA held that respondents worked under the petitioner's control and supervision. Assuming respondents are piece-rate employees, such will not exculpate the petitioner from complying with labor standards based on the Rules Implementing the Labor Code and existing jurisprudence.

Petitioner filed its Motion for Reconsideration<sup>[11]</sup> which was, however, denied in a Resolution<sup>[12]</sup> dated September 26, 2005. Petitioner received the copy of the said Resolution on October 4, 2005. Initially, petitioner filed a Motion<sup>[13]</sup> for Extension of Time to File a Petition for Review on Certiorari under Rule 45 on October 18, 2005. However, on November 17, 2005, petitioner filed a Manifestation and Motion,<sup>[14]</sup> stating that "*in the course of the preparation of the petition, petitioner through*

*counsel has realized that the proper action to be filed is a PETITION FOR CERTIORARI under Rule 65 of the Rules of Court and not (a) PETITION FOR REVIEW ON CERTIORARI under Rule 45 of the Rules of Court” and that it will be filing a Petition for Certiorari under Rule 65 instead. Hence, this Petition for Certiorari under Rule 65, ascribing grave abuse of discretion on the CA in affirming the DOLE Secretary's ruling on the following grounds:*

- I. THAT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND HAS COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT THE WORKERS ARE REGULAR EMPLOYEES OF ILOILO LA FILIPINA UYGONGCO CORPORATION DESPITE THEIR EXECUTION OF AN AFFIDAVIT ADMITTING THE FACT THAT THEY ARE “PAKYAW” WORKERS AND, THEREFORE, NOT ENTITLED TO THE LABOR STANDARDS PROVIDED (SIC) UNDER THE LABOR CODE;
  
- II. THAT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND HAS COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT THE WORKERS ARE REGULAR EMPLOYEES AND, THEREFORE, ENTITLED TO THEIR INDIVIDUAL ENTITLEMENT NOTWITHSTANDING THE DECISION OF THE HONORABLE 18TH DIVISION, COURT OF APPEALS, CEBU CITY, DISMISSING THE WORKERS' COMPLAINT FOR ILLEGAL DISMISSAL AND IN EFFECT, AFFIRMING THE DECISION OF THE 4TH [DIVISION] NATIONAL LABOR RELATIONS COMMISSION, CEBU CITY, THEREBY DECLARING THEM AS “PAKYAW” WORKERS AND, THEREFORE, NOT ENTITLED TO THEIR MONETARY CLAIMS;
  
- III. THAT THE HONORABLE COURT OF APPEALS HAS SERIOUSLY ERRED AND HAS COMMITTED GRAVE ABUSE OF DISCRETION IN NOT FINDING THAT THE LA FILIPINA UYGONGCO WORKERS HAVE VIOLATED THE RULE AGAINST FORUM SHOPPING.

Petitioner posits (1) that the affidavits executed by the respondents are not pro-forma and the same particularly stated that the respondents are “pakyaw” employees; (2) that they executed the same freely and voluntarily before the DOLE Region VI Office; (3) that the DOLE Secretary's and the CA's respective acts of disregarding the first set of affidavits and giving credence to the subsequent Joint Affidavit of the respondents stating that they are regular employees would sanction the perjurious acts of the workers and are tantamount to grave abuse of discretion; and (4) that the respondents are guilty of forum shopping because six of its officers/members (complainants) filed a case<sup>[15]</sup> for Union Busting, Underpayment of Wages, Non-payment of Holiday Pay, Service Incentive Leave Pay, 13th Month Pay, Night Shift Differentials, Allowances and Attorney's Fees (Union Busting case) against herein petitioner and as such, there is identity of parties and causes of action.<sup>[16]</sup> Moreover, in this Union Busting case both the Labor Arbiter<sup>[17]</sup> and the National Labor Relations Commission (NLRC)<sup>[18]</sup> uniformly held that said complainants were not illegally dismissed. Both also held that the complainants were “pakyaw employees” and, as such, they are not entitled to their respective monetary claims.<sup>[19]</sup> On certiorari, the CA dismissed the complainants' petition based on procedural infirmities. The said Union Busting case is still pending before the CA on Motion for Reconsideration.<sup>[20]</sup>

On the other hand, respondents submit that the lone issue in this case is whether or not the CA committed grave abuse of discretion in upholding the DOLE Secretary's Orders which the petitioner failed to show; that the instant Petition is anchored on questions of fact; that petitioner did not attach all the relevant and pertinent pleadings and documents in violation of Rule 65; that the first set of affidavits executed by respondents were merely pro-forma, un-sworn affidavits; that petitioner did not dispute the contention that they are engaged in the trucking and trading businesses and that respondents are its drivers and members of its motor pool personnel, hence, respondents are regular employees since their work is directly and necessarily connected with petitioner's business; that petitioner wielded control and supervision over the respondents as a result its officers/members were illegally dismissed, giving rise to the Union Busting case; that petitioner never advanced any argument refuting respondents' assertion that the latter received wages below the minimum; that petitioner as respondents' employer failed to overcome the burden of proving that it complied with the minimum wage law and the labor standards law; that petitioner's act of citing the rulings of the Labor Arbiter and the NLRC on the Union Busting case violates the rule on *sub judice*; that on the premise that said decisions on the Union Busting case relied on the findings of the DOLE Regional Director and such findings were duly overturned by the DOLE Secretary, said decisions have no more leg to stand on; and, that there is no forum shopping in this case as the Union Busting case is based on Illegal Dismissal while the instant case emanated from the routine labor inspection of DOLE Region VI Office.<sup>[21]</sup>

We deny the instant Petition.

The Petition is evidently used as a substitute for the lost remedy of appeal.

Mark that what is being assailed in this recourse is the CA Decision dated December 2, 2004. Rule 45 of the Rules of Civil Procedure specifically provides that an appeal by certiorari from the judgments or final orders or resolutions of the Court of Appeals is by *verified petition for review on certiorari*. Thus:

SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

SECTION 2. *Time for filing; extension* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

The aggrieved party is proscribed from assailing a decision or final order of the CA via Rule 65 because such recourse is proper only if the party has no plain, speedy