518 Phil. 146

FIRST DIVISION

[G.R. NO. 168052, February 20, 2006]

POSEIDON FISHING/TERRY DE JESUS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND JIMMY S. ESTOQUIA, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Article 280 of the Labor Code, in its truest sense, distinguishes between regular and casual employees to protect the interests of labor. Its language evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual status for as long as convenient.[1]

This petition assails the Decision[2] of the Court of Appeals dated 14 March 2005 in CA-G.R. SP No. 81140 entitled, "*Poseidon Fishing/Terry De Jesus v. National Labor Relations Commission and Jimmy S. Estoquia*" which affirmed that of the National Labor Relations Commission (NLRC). The NLRC had affirmed with modification the Decision dated 5 December 2000 of Labor Arbiter Melquiades Sol D. Del Rosario in NLRC-NCR Case No. 00-07-03625-00, declaring private respondent to have been illegally dismissed and entitled to backwages and separation pay.

As thoroughly told by the Court of Appeals and the Labor Arbiter, the particulars are beyond dispute:

Petitioner Poseidon Fishing is a fishing company engaged in the deep-sea fishing industry. Its various vessels catch fish in the outlying islands of the Philippines, which are traded and sold at the Navotas Fish Port. One of its boat crew was private respondent Jimmy S. Estoquia.[3] Petitioner Terry de Jesus is the manager of petitioner company.

Private respondent was employed by Poseidon Fishing in January 1988 as Chief Mate. After five years, he was promoted to Boat Captain. In 1999, petitioners, without reason, demoted respondent from Boat Captain to Radio Operator of petitioner Poseidon.[4] As a Radio Operator, he monitored the daily activities in their office and recorded in the duty logbook the names of the callers and time of their calls.[5]

On 3 July 2000, private respondent failed to record a 7:25 a.m. call in one of the logbooks. However, he was able to record the same in the other logbook. Consequently, when he reviewed the two logbooks, he noticed that he was not able to record the said call in one of the logbooks so he immediately recorded the 7:25

a.m. call after the 7:30 a.m. entry.[6]

Around 9:00 o'clock in the morning of 4 July 2000, petitioner Terry de Jesus detected the error in the entry in the logbook. Subsequently, she asked private respondent to prepare an incident report to explain the reason for the said oversight.[7]

At around 2:00 o'clock in the afternoon of that same day, petitioner Poseidon's secretary, namely Nenita Laderas, summoned private respondent to get his separation pay amounting to Fifty-Five Thousand Pesos (P55,000.00). However, he refused to accept the amount as he believed that he did nothing illegal to warrant his immediate discharge from work.[8]

Rising to the occasion, private respondent filed a complaint for illegal dismissal on 11 July 2000 with the Labor Arbiter, alleging nonpayment of wages with prayer for back wages, damages, attorney's fees, and other monetary benefits.

In private respondent's position paper, he averred that petitioner Poseidon employed him as a Chief Mate sometime in January 1988. He claimed that he was promoted to the position of Boat Captain five years after. However, in 1999, he was demoted from Boat Captain to Radio Operator without any reason and shortly, he was terminated without just cause and without due process of law.

Conversely, petitioners Poseidon and Terry de Jesus strongly asserted that private respondent was a contractual or a casual employee whose services could be terminated at the end of the contract even without a just or authorized cause in view of Article 280 of the Labor Code, which provides:

> Art. 280. Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, *except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.*
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists. (Emphasis supplied.)

Petitioners further posited that when the private respondent was engaged, it was made clear to him that he was being employed only on a "*por viaje*" or per trip basis and that his employment would be terminated at the end of the trip for which he was being hired. As such, the private respondent could not be entitled to separation pay and other monetary claims.

On 5 December 2000, following the termination of the hearing of the case, the Labor Arbiter decided in favor of private respondent. The Labor Arbiter held that even if the private respondent was a casual employee, he became a regular employee after a period of one year and, thereafter, had attained tenurial security which could only be lost due to a legal cause after observing due process. The dispositive portion of the Decision reads:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant to have been illegally dismissed and so must immediately be reinstated to his former position as radio operator and paid by respondent[s] *in solidum* his backwages which as of December 3, 2000 had already accumulated in the sum of P35,880.00 plus his unpaid one (1) week salary in the sum of P1,794.00.
>
> Respondents are further ordered to pay attorney's fees in a sum equivalent to 10% of the awarded claims.[9]

Consequently, the petitioners filed their Memorandum of Appeal with the NLRC for the reversal of the aforesaid decision. On 24 September 2002, the NLRC affirmed the decision of the Labor Arbiter with the modification, *inter alia*, that: (a) the private respondent would be paid his separation pay equivalent to one-half of his monthly pay for every year of service that he has rendered in lieu of reinstatement; and (b) an amount equivalent to six months salary should be deducted from his full backwages because it was his negligence in the performance of his work that brought about his termination. It held:

> WHEREFORE, the decision is modified as follows:
>
> 1. The amount equivalent to six (6) months salary is to be deducted from the total award of backwages;
> 2. The respondent is ordered to pay complainant separation pay equivalent to one-half (1/2) month pay for every year of service counted from 1998; x x x
> 3. The respondent is ordered to pay complainant's unpaid wages in the amount of P1,794.00; and
> 4. Respondent is ordered to pay attorney's fees in a sum equivalent to ten percent (10%) of the awarded claims.[10]

Petitioners moved for the reconsideration of the NLRC decision, but were denied in a Resolution dated 29 August 2003.

Petitioners filed a Petition for *Certiorari* with the Court of Appeals, imputing grave abuse of discretion, but the Court of Appeals found none. The following is the *fallo* of the decision:

> WHEREFORE, the foregoing premises considered, the instant petition is hereby DENIED.[11]

In a last attempt at vindication, petitioners filed the present petition for review with the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE RESPONDENT WAS A REGULAR EMPLOYEE WHEN IN TRUTH HE WAS A CONTRACTUAL/PROJECT/SEASONAL EMPLOYEE.

II.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT WAS ILLEGALLY DISMISSED FROM EMPLOYMENT.

III.

THE HONORABLE COURT OF APPEALS ERRED IN NOT CONSIDERING THE RESPONDENT A SEASONAL EMPLOYEE AND APPLYING THE RULING IN RJL MARTINEZ FISHING CORPORATION vs. NLRC THAT "THE ACTIVITY OF FISHING IS A CONTINUOUS PROCESS AND COULD HARDLY BE CONSIDERED AS SEASONAL IN NATURE."

IV.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT IS ENTITLED TO BACKWAGES, SEPARATION PAY, ATTORNEY'S FEES AND OTHER MONETARY BENEFITS.

V.

THE HONORABLE COURT OF APPEALS ERRED IN NOT RESOLVING THE PRAYER FOR THE ISSUANCE OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER.[12]

The fundamental issue entails the determination of the nature of the contractual relationship between petitioners and private respondent, *i.e.*, was private respondent a regular employee at the time his employment was terminated on 04 July 2000?

Asserting their right to terminate the contract with private respondent per the "*Kasunduan*" with him, petitioners pointed to the provision thereof stating that he was being employed only on a ''*por viaje*'' basis and that his employment would be terminated at the end of the trip for which he was being hired, to wit:

> NA, kami ay sumasang-ayon na MAGLINGKOD at GUMAWA ng mga gawaing magmula sa pag-alis ng lantsa sa pondohan sa Navotas patungo sa palakayahan; pabalik sa pondohan ng lantsa sa Navotas hanggang sa paghango ng mga kargang isda.[13]

Petitioners lament that fixed-term employment contracts are recognized as valid under the law notwithstanding the provision of Article 280 of the Labor Code. Petitioners theorize that the Civil Code has always recognized the validity of contracts with a fixed and definite period, and imposes no restraints on the freedom of the parties to fix the duration of the contract, whatever its object, be it species, goods or services, except the general admonition against stipulations contrary to law, morals, good customs, public order and public policy. Quoting *Brent School*

Inc. v. Zamora,[14] petitioners are hamstrung on their reasoning that under the Civil Code, fixed-term employment contracts are not limited, as they are under the present Labor Code, to those that by their nature are seasonal or for specific projects with pre-determined dates of completion as they also include those to which the parties by free choice have assigned a specific date of termination. Hence, persons may enter into such contracts as long as they are capacitated to act, petitioners bemoan.

We are far from persuaded by petitioners' ratiocination.

Petitioners' construal of *Brent School, Inc. v. Zamora,* has certainly gone astray. The subject of scrutiny in the Brent case was the employment contract inked between the school and one engaged as its Athletic Director. The contract fixed a specific term of five years from the date of execution of the agreement. This Court upheld the validity of the contract between therein petitioner and private respondent, fixing the latter's period of employment. This Court laid down the following criteria for judging the validity of such fixed-term contracts, to wit:

> Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. *It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.* Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.[15] (Emphasis supplied.)

Brent cited some familiar examples of employment contracts which may neither be for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance, i.e., overseas employment contracts, appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible.[16] Thus, in *Brent*, the acid test in considering fixed-term contracts as valid is: **if from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be disregarded for being contrary to public policy.**