524 Phil. 346

# THIRD DIVISION

# [ G.R. NO. 148130, June 16, 2006 ]

## PETROLEUM SHIPPING LIMITED (FORMERLY ESSO INTERNATIONAL SHIPPING (BAHAMAS) CO., LTD.) AND TRANS-GLOBAL MARITIME AGENCY, INC., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND FLORELLO W. TANCHICO, RESPONDENTS.

## D E C I S I O N

**CARPIO, J.:**

### The Case

Before the Court is a petition for review[1] assailing the 25 January 2001 Decision[2] and 7 May 2001 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 54756.

### The Antecedent Facts

On 6 March 1978, Esso International Shipping (Bahamas) Co., Ltd., ("Esso") through Trans-Global Maritime Agency, Inc. ("Trans-Global") hired Florello W. Tanchico ("Tanchico") as First Assistant Engineer. In 1981, Tanchico became Chief Engineer. On 13 October 1992, Tanchico returned to the Philippines for a two-month vacation after completing his eight-month deployment.

On 8 December 1992, Tanchico underwent the required standard medical examination prior to boarding the vessel. The medical examination revealed that Tanchico was suffering from "Ischemic Heart Disease, Hypertensive Cardio-Muscular Disease and Diabetes Mellitus." Tanchico took medications for two months and a subsequent stress test showed a negative result. However, Esso no longer deployed Tanchico. Instead, Esso offered to pay him benefits under the Career Employment Incentive Plan. Tanchico accepted the offer.

On 26 April 1993, Tanchico filed a complaint against Esso, Trans-Global and Malayan Insurance Co., Inc. ("Malayan") before the Philippine Overseas Employment Administration (POEA) for illegal dismissal with claims for backwages, separation pay, disability and medical benefits and 13th month pay. In view of the enactment of Republic Act No. 8042 ("RA 8042")[4] transferring to the National Labor Relations Commission (NLRC) the jurisdiction over money claims of overseas workers, the case was indorsed to the Arbitration Branch of the National Capital Region. In a Decision[5] dated 16 October 1996, Labor Arbiter Jose G. De Vera ("Labor Arbiter De Vera") dismissed the complaint for lack of merit. Tanchico appealed to the NLRC.

### The Ruling of the NLRC

In its Resolution[6] of 3 September 1998, the NLRC affirmed the Decision of Labor Arbiter De Vera. Tanchico filed a motion for reconsideration. In a Resolution[7] promulgated on 29 March 1999, the NLRC reconsidered its 3 September 1998 Resolution, as follows:

> On the claim of illegal dismissal, the same is unavailing as complainant had been declared as one with partial permanent disability. Thus, he should be entitled to disability benefit of 18 days for every year of credited service of fourteen (14) years less the amount he already received under the Company's Disability Plan.
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> On the claim of 13th month pay, the respondent Agency not falling under the enumerated exempted employers under P.D. 851 and in the absence of any proof that respondent is already paying its employees a 13th month pay or more in a calendar year, perforce, respondent agency should pay complainant his monthly pay computed at [sic] the actual month [sic] worked, which is 8 months.
>
> Since complainant was forced to litigate his case, he is hereby awarded 10% of the total award as attorney's fees.
>
> SO ORDERED.[8]

Esso and Trans-Global moved for the reconsideration of the 29 March 1999 Resolution.[9] In its 27 July 1999 Resolution,[10] the NLRC denied their motion.

Esso, now using the name Petroleum Shipping Limited ("Petroleum Shipping"), and Trans-Global (collectively referred to as "petitioners") filed a petition for certiorari before the Court of Appeals assailing the 29 March 1999 and 27 July 1999 Resolutions of the NLRC.

## The Ruling of the Court of Appeals

In its Decision promulgated on 25 January 2001, the Court of Appeals affirmed in toto the 29 March 1999 Resolution of the NLRC.

The Court of Appeals ruled that Tanchico was a regular employee of Petroleum Shipping. The Court of Appeals held that petitioners are not exempt from the coverage of Presidential Decree No. 851, as amended ("PD 851")[11] which mandates the payment of 13th month pay to all employees. The Court of Appeals further ruled that Tanchico is entitled to disability benefits based on his 14 years of tenure with petitioners. The Court of Appeals stated that the employer-employee relationship subsisted even during the period of Tanchico's vacation. The Court of Appeals noted that petitioners were aware of Tanchico's medical history yet they still deployed him for 14 years. Finally, the Court of Appeals sustained the award of attorney's fees.

Petitioners moved for the reconsideration of the Decision. In its 7 May 2001 Resolution, the Court of Appeals modified its Decision by deducting Tanchico's vacation from his length of service. Thus:

WHEREFORE, our decision is hereby MODIFIED. The petitioners are ordered to pay to the private respondent the following: (1) disability wages equivalent to 18 days per year multiplied by 10 years less any amount already received under the company's disability plan; prorated 13th month pay corresponding to eight (8) months of actual work; and attorney's fee equivalent to 10% of the total award.

SO ORDERED.[12]

Petitioners went to this Court for relief on the following grounds:

I. The Court of Appeals decided a question of substance not in accord with law, applicable decision of this Court and International Maritime Law when it ruled that private respondent, a seafarer, was a regular employee;

II. The Court of Appeals decided a question of substance not in accord with law when it held that the private respondent was entitled to greater disability benefit than he was [sic];

III. The Court of Appeals decided a question of substance not heretofore determined by this Court when it ruled that private respondent was entitled to 13th month pay although it was not provided for in the contract of employment between petitioners and private respondent; and

IV. The Court of Appeals decided a question of substance not in accord with law when it awarded private respondent attorney's fees despite the Labor Arbiter's and the public respondent's, albeit initially, dismissal of the complaint.[13]

## The Issues

The issues are as follows:

1. Whether Tanchico is a regular employee of petitioners; and

2. Whether Tanchico is entitled to 13th month pay, disability benefits and attorney's fees.

## The Ruling of This Court

The petition is partly meritorious.

### *Seafarers are Contractual Employees*

The issue on whether seafarers are regular employees is already a settled matter.

In ***Ravago v. Esso Eastern Marine, Ltd.,***[14] the Court traced its ruling in a number of cases that seafarers are contractual, not regular, employees. Thus, in ***Brent School, Inc. v. Zamora,***[15] the Court cited overseas employment contract as an example of contracts where the concept of regular employment does not

apply, whatever the nature of the engagement and despite the provisions of Article 280 of the Labor Code. In ***Coyoca v. NLRC,***[16] the Court held that the agency is liable for payment of a seaman's medical and disability benefits in the event that the principal fails or refuses to pay the benefits or wages due the seaman although the seaman may not be a regular employee of the agency.

The Court squarely passed upon the issue in ***Millares v. NLRC***[17] where one of the issues raised was whether seafarers are regular or contractual employees whose employment are terminated everytime their contracts of employment expire. The Court explained:

> [I]t is clear that seafarers are considered contractual employees. They can not be considered as regular employees under Article 280 of the Labor Code. Their employment is governed by the contracts they sign everytime they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. They fall under the exception of Article 280 whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of 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. We need not depart from the rulings of the Court in the two aforementioned cases which indeed constitute *stare decisis* with respect to the employment status of seafarers.
>
> Petitioners insist that they should be considered regular employees, since they have rendered services which are usually necessary and desirable to the business of their employer, and that they have rendered more than twenty (20) years of service. While this may be true, the *Brent* case has, however, held that there are certain forms of employment which also require the performance of usual and desirable functions and which exceed one year but do not necessarily attain regular employment status under Article 280. Overseas workers including seafarers fall under this type of employment which are governed by the mutual agreements of the parties.
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> In this jurisdiction and as clearly stated in the *Coyoca* case, Filipino seamen are governed by the Rules and Regulations of the POEA. The Standard Employment Contract governing the employment of All Filipino Seamen on Board Ocean-Going Vessels of the POEA, particularly in Part I, Sec. C specifically provides that the contract of seamen shall be for a fixed period. And in no case should the contract of seamen be longer than 12 months. It reads:
>
> Section C. Duration of ContractThe period of employment shall be for a fixed period *but in no case to exceed 12 months* and shall be stated in the Crew Contract. Any extension of the Contract period shall be subject to the mutual consent of the parties.
>
> Moreover, it is an accepted maritime industry practice that employment of seafarers are for a fixed period only. Constrained by the nature of their employment which is quite peculiar and unique in itself, it is for the

> mutual interest of both the seafarer and the employer why the employment status must be contractual only or for a certain period of time. Seafarers spend most of their time at sea and understandably, they can not stay for a long and an indefinite period of time at sea. Limited access to shore society during the employment will have an adverse impact on the seafarer. The national, cultural and lingual diversity among the crew during the COE is a reality that necessitates the limitation of its period.
>
> Petitioners make much of the fact that they have been continually re-hired or their contracts renewed before the contracts expired (which has admittedly been going on for twenty (20) years). By such circumstance they claim to have acquired regular status with all the rights and benefits appurtenant to it.
>
> Such contention is untenable. Undeniably, this circumstance of continuous re-hiring was dictated by practical considerations that experienced crew members are more preferred. Petitioners were only given priority or preference because of their experience and qualifications but this does not detract the fact that herein petitioners are contractual employees. They can not be considered regular employees. x x x[18]

The Court reiterated the ***Millares*** ruling in ***Gu-Miro v. Adorable***[19] where it held that a radio officer on board a vessel cannot be considered as a regular employee notwithstanding that the work he performs is necessary and desirable in the business of the company.

Thus, in the present case, the Court of Appeals erred in ruling that Tanchico was a regular employee of Petroleum Shipping.

### *On 13th Month Pay*

The Court of Appeals premised its grant of 13th month pay on its ruling that Tanchico was a regular employee. The Court of Appeals also ruled that petitioners are not exempt from the coverage of PD 851 which requires all employers to pay their employees a 13th month pay.

We do not agree with the Court of Appeals. Again, Tanchico was a contractual, not a regular, employee. Further, PD 851 does not apply to seafarers. The WHEREAS clauses of PD 851 provides:

> WHEREAS, it is necessary to further protect the level of real wages from ravages of world-wide inflation;
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> WHEREAS, there has been no increase in the legal minimum wage rates since 1970;
>
> WHEREAS, the Christmas season is an opportune time for society to show its concern for the plight of the working masses so they may properly celebrate Christmas and New Year.