

## THIRD DIVISION

[ G.R. NO. 153832, March 18, 2005 ]

**FILIPINAS PRE-FABRICATED BUILDING SYSTEMS  
(FILSYSTEMS), INC., AND FELIPE A. CRUZ JR., PETITIONERS, VS.  
ROGER D. PUENTE,<sup>[1]</sup> RESPONDENT.**

### DECISION

#### PANGANIBAN, J.:

Without a valid cause, the employment of project employees cannot be terminated prior to expiration. Otherwise, they shall be entitled to reinstatement with full back wages. However, if the project or work is completed during the pendency of the ensuing suit for illegal dismissal, the employees shall be entitled only to full back wages from the date of the termination of their employment until the actual completion of the project or work.

#### The Case

Before us is a Petition for Review<sup>[2]</sup> under Rule 45 of the Rules of Court, seeking to annul and reverse the April 16, 2002 Decision<sup>[3]</sup> and the May 30, 2002 Resolution<sup>[4]</sup> of the Court of Appeals (CA) in CA-GR SP No. 66756. The assailed Decision disposed as follows:

"WHEREFORE, premises considered, the petition is **GRANTED** and the decision dated May 18, 2001 and resolution dated June 29, 2001 of the NLRC are hereby **annulled and set aside**. [Petitioner] Filsystems, Inc. is hereby ordered to reinstate [respondent] immediately to his former position without loss of seniority and privileges with full back wages from the date of his dismissal until his actual reinstatement, plus 10% of the total monetary award as attorney's fees."<sup>[5]</sup>

The assailed Resolution denied petitioners' Motion for Reconsideration.

#### The Facts

The factual antecedents are summarized by the CA as follows:

"[Respondent] avers that he started working with [Petitioner] Filsystems, Inc., a corporation engaged in construction business, on June 12, 1989; that he was initially hired by [petitioner] company as an 'installer'; that he was later promoted to mobile crane operator and was stationed at the company premises at No. 69 Industria Road, Bagumbayan, Quezon City; that his work was not dependent on the completion or termination of any project; that since his work was not dependent on any project, his employment with the [petitioner-]company was continuous and without

interruption for the past ten (10) years; that on October 1, 1999, he was dismissed from his employment allegedly because he was a project employee. He filed a pro forma complaint for illegal dismissal against the [petitioner] company on November 18, 1999.

"The [petitioner-]company however claims that complainant was hired as a project employee in the company's various projects; that his employment contracts showed that he was a project worker with specific project assignments; that after completion of each project assignment, his employment was likewise terminated and the same was correspondingly reported to the DOLE.

"Labor Arbiter Veneranda C. Guerrero dismissed the complaint for lack of merit, ruling thus:

'WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for illegal dismissal for lack of merit.' [Petitioner] Filsystems, Inc. is hereby ordered to pay complainant Roger D. [F]uente the amount of FOUR THOUSAND TWO HUNDRED TWELVE PHILIPPINE PESOS (P4,212.00) representing his pro-rata 13th month pay for 1999, plus ten percent (10%) thereof as and for attorney's fees.

'SO ORDERED.'

"[Respondent] appealed. However, [the] National Labor Relations Commission (NLRC) dismissed the same and the subsequent motion for reconsideration."<sup>[6]</sup>

### **Ruling of the Court of Appeals**

The Court of Appeals reversed the NLRC and the labor arbiter thus:

"The employment contracts signed by petitioner Puente do not have the specified duration for each project contrary to the provision of Article 280 of the Labor Code, nor did petitioner work in the project sites, but had always been assigned at the company plant attending to the maintenance of all mobile cranes of the company, performing tasks vital and desirable in the employer's usual business for ten (10) continuous years."<sup>[7]</sup>

The CA concluded that respondent was a regular employee of petitioners.

Hence, this Petition.<sup>[8]</sup>

### **The Issues**

In its Memorandum, petitioners raise the following issues for our consideration:

"1. Whether or not the Court of Appeals erred and committed grave abuse of discretion in finding that:

'The employment contracts signed by private respondent Puente do not have the specified duration for each project contrary to the provision of Art. 280 of the Labor Code, nor did petitioner work in the project sites, but had always been assigned at the company plant attending to the maintenance of all mobile cranes of the company, performing tasks vital and desirable in the company's usual business for ten (10) continuous years.'

"2. Whether or not the Court a quo erred and committed grave abuse of discretion in finding that the private respondent is a regular employee and not a project employee?

"3. Whether or not the Court a quo erred and committed grave abuse of discretion in giving due course to the private respondent's petition for certiorari under Rule 65 of the 1997 Rules on Civil Procedure; and in annulling and setting aside the Decision dated May 18, 2001 and the Resolution dated June 29, 2001 of the NLRC?

"4. Whether or not the Court a quo erred and committed grave abuse of discretion in ruling that the evidence submitted by the petitioners proving that there was retrenchment program implemented by the petitioner company, as a defense that the private respondent's services was terminated due to absence if not lack of construction project contract, where he may be redeployed or reinstated?

"5. Whether or not the Court a quo erred and committed grave abuse of discretion in ordering the reinstatement of the private respondent, with full back wages plus payment of 10% attorney's fees?"<sup>[9]</sup>

In the main, the issues boil down to (1) whether Roger Puente is a project employee, and (2) whether he is entitled to reinstatement with full back wages.

### **This Court's Ruling**

The Petition is partly meritorious.

#### **First Issue:** **Project Employee**

In general, the factual findings of the Court of Appeals are binding on the Supreme Court. One exception to this rule, however, is when the factual findings of the former are contrary to those of the trial court (or the lower administrative body, as the case may be).<sup>[10]</sup> The question of whether respondent is a regular or a project employee is essentially factual in nature; nonetheless, the Court is constrained to resolve it due to the incongruent findings of the NLRC and the CA.

The Labor Code defines regular, project and casual employees as follows:

ART. 280. *Regular and Casual Employment.* - The provision 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.

With particular reference to the construction industry, to which Petitioner Filsystems belongs, Department (of Labor and Employment) Order No. 19,<sup>[11]</sup> Series of 1993, states:

2.1 Classification of employees. – The employees in the construction industry are generally categorized as a) project employees and b) non-project employees. Project employees are those employed in connection with a particular construction project or phase thereof and whose employment is co-terminous with each project or phase of the project to which they are assigned.

x x x

x x x

x x x

2.2 Indicators of project employment. – Either one or more of the following circumstances, among other, may be considered as indicators that an employee is a project employee.

(a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.

(b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.

(c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.

(d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

(e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions.

(f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

The above-quoted provisions make it clear that a project employee is one whose "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