

## THIRD DIVISION

[ G.R. No. 142248, December 16, 2004 ]

**REBECCA GUTIERREZ, PETITIONER VS. THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, REMPAC PLACEMENT AGENCY AND SIDDCOR INSURANCE CORPORATION, RESPONDENTS.**

### DECISION

**CARPIO MORALES, J.:**

On petition for review on certiorari under Rule 45 of the Rules of Court are the Court of Appeals December 17, 1999 Resolution<sup>[1]</sup> dismissing petitioner Rebecca Gutierrez' petition for certiorari and its February 21, 2000 Resolution<sup>[2]</sup> denying her motion for reconsideration.

On September 4, 1997, petitioner filed a complaint before the Philippine Overseas Employment Administration (POEA), docketed as POEA Case No. RV 97-09-0829, against respondent Rempac Placement Agency (REMPAC) for violation of Articles 32, 34 (a), (b), (i) and 116 of the Labor Code, as amended.<sup>[3]</sup> Petitioner also impleaded as defendant respondent Siddcor Insurance Corporation (SIDDCOR), the surety of REMPAC.

Sometime in February 1995, petitioner applied with REMPAC for employment abroad as a domestic helper. Her application having been granted, she departed for Malaysia on June 17, 1995. She returned to the Philippines on August 28, 1997.<sup>[4]</sup> She later filed a complaint against REMPAC for, in the main, illegal deduction from and withholding of her salaries.

In her complaint, petitioner alleged that she paid REMPAC, on its requirement, P50,000.00, between June 1995 and June 1996. Petitioner was later to state during the hearing of the case that she actually paid REMPAC P3,000.00 representing processing fee and P1,500.00 for medical examinations, she clarifying that the amount of P50,000.00 she mentioned in her Sworn Statement-complaint<sup>[5]</sup> was the aggregate salary deductions made by her employer in Malaysia; that under the provisions of the Standard Employment Contract for Filipino Household Workers<sup>[6]</sup> dated April 5, 1995 which she signed, she was supposed to be paid at least US\$200 or its equivalent in Malaysian currency amounting to MYR540 per month; and that her Malaysian employer in fact agreed to pay her MYR580 per month, but she received only MYR100 a month, her employer informing her that the MYR480 deduction (MYR580-480) was made upon the instruction of a certain Evelina S. Grudo of REMPAC.

REMPAC and SIDDCOR failed to file their respective Answers despite receipt of the

October 28, 1997 Show Cause Order<sup>[7]</sup> issued by the POEA directing them to submit their explanation under oath to the complaint.

By Order<sup>[8]</sup> of October 26, 1998, POEA Administrator Reynaldo A. Regalado dismissed the complaint for lack of merit.

Petitioner filed an appeal<sup>[9]</sup> before the Secretary of the Department of Labor and Employment (DOLE) which dismissed it by Order<sup>[10]</sup> of January 26, 1999.

Her Motion for Reconsideration<sup>[11]</sup> having been denied by Order<sup>[12]</sup> of July 27, 1999, she filed a Special Motion for Extension of Time to File Petition for Certiorari<sup>[13]</sup> before the Court of Appeals (CA), praying for an additional period of fifteen days from October 11, 1999 or until October 26, 1999 within which to file her petition for certiorari.

By Resolution<sup>[14]</sup> of November 11, 1999, the CA granted the Special Motion for Extension and gave petitioner a non-extendible period of fifteen days from the lapse of the original reglementary period within which to file her petition.

On October 26, 1999, petitioner filed her Petition for Certiorari,<sup>[15]</sup> docketed as CA-G.R. S.P. No. 55585.

The CA, however, dismissed petitioner's petition, by Resolution of December 17, 2000, pursuant to Section 7 of Rule 43<sup>[16]</sup> of the Rules of Court, it noting that (1) there was no complete statement of material dates in the petition, petitioner having failed to state the date she received a copy of the January 26, 1999 DOLE Order, (2) the verification with certification on non-forum shopping was executed by counsel and not by petitioner, (3) there was no affidavit of service, and (4) the copies of the January 26, 1999 and July 27, 1999 DOLE Orders were mere photocopies.<sup>[17]</sup>

Petitioner filed a Motion for Reconsideration<sup>[18]</sup> of the December 17, 1999 CA Resolution. And she filed a Supplemental Motion for Reconsideration<sup>[19]</sup> by which she submitted (1) a Verification with Certification of Non-Forum Shopping which she herself executed,<sup>[20]</sup> (2) a duly notarized Affidavit of Service,<sup>[21]</sup> and (3) certified true copies of the January 26, 1999 and July 27, 1999 DOLE Orders.<sup>[22]</sup>

By Resolution of February 21, 2000, the CA denied petitioner's Motion for Reconsideration in this wise:

In connection with the petitioner' (sic) Motion for Reconsideration dated January 18, 2000, we find that none of the copies of the petition as submitted contains as attachments the **duplicate** original copies of the questioned orders of January 26, 1999 and July 27, 1999.

Moreover, the statement of material dates is incomplete in that it failed to state when the petitioner received a copy of the order denying her motion for reconsideration.

Section 3, Rule 46 of the 1997 Rules of Civil Procedure, as corrected by Supreme Court Circular No. 39-98 provides:

*“SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.*

**“In actions filed under Rule 65, the petitioner shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.**

“xxx xxx xxx”

The same circular further added a second paragraph to Section 4, Rule 65, to wit:

“xxx xxx xxx”

**“If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.”**<sup>[23]</sup> (Emphasis and underscoring supplied)

By a subsequent Resolution<sup>[24]</sup> of March 20, 2000, the CA, passing on petitioner’s Supplemental Motion for Reconsideration, resolved to merely note it.

Since despite submission of the Supplemental Motion for Reconsideration, petitioner still failed to comply with either Sec. 3, Rule 46 of the 1997 Rules of [C]ivil Procedure as corrected by Supreme Court Circular No. 39-98 or Sec. 4, Rule 65 as amended, petitioner’s supplemental motion for reconsideration is merely noted in view of the February 21, 2000 resolution denying her motion for reconsideration.<sup>[25]</sup> (Underscoring supplied)

Hence, the present petition for review on certiorari<sup>[26]</sup> raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN DISMISSING THE PETITION FOR CERTIORARI AND IN DISREGARDING THE MOTION FOR RECONSIDERATION FILED BY

PETITIONER.

II.

WHETHER OR NOT THE GROUNDS CITED BY PETITIONER'S COUNSEL IN THE MOTION FOR RECONSIDERATION FILED WITH THE HONORABLE COURT OF APPEALS ALLOWS THE RELAXATION OF THE STRINGENT APPLICATION OF THE RULES ON PROCEDURE SPECIFICALLY ON LABOR CASES IN THE PARAMOUNT INTEREST OF SUBSTANTIAL JUSTICE.

III.

WHETHER OR NOT THERE WAS SUBSTANTIAL COMPLIANCE BY THE PETITIONER WITH THE PROVISIONS OF SEC. 3, RULE 46 AND RULE 65, RESPECTIVELY, OF THE 1997 RULES OF CIVIL PROCEDURE.

IV.

WHETHER OR NOT THE HONORABLE (sic) COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO THE PETITION FOR CERTIORARI DESPITE THE FACT THAT IT WAS IMPRESSED WITH MERIT.

V.

WHETHER OR NOT PRIVATE RESPONDENT REMPAC PLACEMENT AGENCY IS LIABLE FOR VIOLATION OF ARTICLES 32, 34(a), (b), (i) AND 116 OF THE NEW LABOR CODE, AS AMENDED.

VI.

WHETHER OR NOT THE TECHNICAL RULES OF EVIDENCE ARE APPLICABLE IN THE CASE UNDER REVIEW INVOLVING CLAIMS OF OVERSEAS CONTRACT WORKERS.<sup>[27]</sup>

In its Comment<sup>[28]</sup> of January 14, 2002, SIDDCOR avers that the petition for certiorari before the CA was correctly dismissed as it was filed twenty nine days beyond the 60-day period mandated by Section 4, Rule 65 of the Rules of Court, arguing as follows:

Applying Section 4 of Rule 65 of the Rules of Court and considering that herein petitioner had received, on March 11, 1999 the decision of the Secretary of the Department of Labor and Employment affirming POEA Order dated [October] 26, 1998 she ha[d] therefore sixty (60) days to file the subject petition for certiorari. But instead, it had filed a Motion for Reconsideration on March 19, 1999, consuming eight (8) days and on August 6, 1999 through her counsel petitioner had received the subject Order dated July 27, 1999 denying her motion for reconsideration. She therefore, ha[d] fifty eight (58) remaining days or until September 27, 1999 within which to file her petition for certiorari or any appropriate pleading, contrary to her allegation that the last day was on October 26, 1999.<sup>[29]</sup>

The petition is impressed with merit.

Section 3 of Rule 46 of the Rules of Court provides:

*SEC. 3. Contents and filing of petition; effect of non-compliance with requirements.*- The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or (final) order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

There are three material dates that must be stated in a petition for certiorari brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; second, the date when a motion for new trial or for reconsideration when one such was filed; and third, the date when notice of the denial thereof was received.<sup>[30]</sup>