446 Phil. 404

SECOND DIVISION

[G.R. No. 142293, February 27, 2003]

VICENTE SY, TRINIDAD PAULINO, 6B'S TRUCKING CORPORATION, AND SBT[1] TRUCKING CORPORATION, PETITIONERS, VS. HON. COURT OF APPEALS AND JAIME SAHOT, RESPONDENTS.

DECISION

QUISUMBING, J.:

This petition for review seeks the reversal of the decision[2] of the Court of Appeals dated February 29, 2000, in CA-G.R. SP No. 52671, affirming with modification the decision[3] of the National Labor Relations Commission promulgated on June 20, 1996 in NLRC NCR CA No. 010526-96. Petitioners also pray for the reinstatement of the decision[4] of the Labor Arbiter in NLRC NCR Case No. 00-09-06717-94.

Culled from the records are the following facts of this case:

Sometime in 1958, private respondent Jaime Sahot[5] started working as a truck helper for petitioners' family-owned trucking business named Vicente Sy Trucking. In 1965, he became a truck driver of the same family business, renamed T. Paulino Trucking Service, later 6B's Trucking Corporation in 1985, and thereafter known as SBT Trucking Corporation since 1994. Throughout all these changes in names and for 36 years, private respondent continuously served the trucking business of petitioners.

In April 1994, Sahot was already 59 years old. He had been incurring absences as he was suffering from various ailments. Particularly causing him pain was his left thigh, which greatly affected the performance of his task as a driver. He inquired about his medical and retirement benefits with the Social Security System (SSS) on April 25, 1994, but discovered that his premium payments had not been remitted by his employer.

Sahot had filed a week-long leave sometime in May 1994. On May 27th, he was medically examined and treated for EOR, presleyopia, hypertensive retinopathy G II (Annexes "G-5" and "G-3", pp. 48, 104, respectively),[6] HPM, UTI, Osteoarthritis (Annex "G-4", p. 105),[7] and heart enlargement (Annex G, p. 107).[8] On said grounds, Belen Paulino of the SBT Trucking Service management told him to file a formal request for extension of his leave. At the end of his week-long absence, Sahot applied for extension of his leave for the whole month of June, 1994. It was at this time when petitioners allegedly threatened to terminate his employment should he refuse to go back to work.

At this point, Sahot found himself in a dilemma. He was facing dismissal if he

refused to work, But he could not retire on pension because petitioners never paid his correct SSS premiums. The fact remained he could no longer work as his left thigh hurt abominably. Petitioners ended his dilemma. They carried out their threat and dismissed him from work, effective June 30, 1994. He ended up sick, jobless and penniless.

On September 13, 1994, Sahot filed with the NLRC NCR Arbitration Branch, a complaint for illegal dismissal, docketed as NLRC NCR Case No. 00-09-06717-94. He prayed for the recovery of separation pay and attorneys fees against Vicente Sy and Trinidad Paulino-Sy, Belen Paulino, Vicente Sy Trucking, T. Paulino Trucking Service, 6B's Trucking and SBT Trucking, herein petitioners.

For their part, petitioners admitted they had a trucking business in the 1950s but denied employing helpers and drivers. They contend that private respondent was not illegally dismissed as a driver because he was in fact petitioner's industrial partner. They add that it was not until the year 1994, when SBT Trucking Corporation was established, and only then did respondent Sahot become an employee of the company, with a monthly salary that reached P4,160.00 at the time of his separation.

Petitioners further claimed that sometime prior to June 1, 1994, Sahot went on leave and was not able to report for work for almost seven days. On June 1, 1994, Sahot asked permission to extend his leave of absence until June 30, 1994. It appeared that from the expiration of his leave, private respondent never reported back to work nor did he file an extension of his leave. Instead, he filed the complaint for illegal dismissal against the trucking company and its owners.

Petitioners add that due to Sahot's refusal to work after the expiration of his authorized leave of absence, he should be deemed to have voluntarily resigned from his work. They contended that Sahot had all the time to extend his leave or at least inform petitioners of his health condition. Lastly, they cited NLRC Case No. RE-4997-76, entitled "*Manuelito Jimenez et al. vs. T. Paulino Trucking Service,*" as a defense in view of the alleged similarity in the factual milieu and issues of said case to that of Sahot's, hence they are in *pari materia* and Sahot's complaint ought also to be dismissed.

The NLRC NCR Arbitration Branch, through Labor Arbiter Ariel Cadiente Santos, ruled that there was no illegal dismissal in Sahot's case. Private respondent had failed to report to work. Moreover, said the Labor Arbiter, petitioners and private respondent were industrial partners before January 1994. The Labor Arbiter concluded by ordering petitioners to pay "financial assistance" of P15,000 to Sahot for having served the company as a regular employee since January 1994 only.

On appeal, the National Labor Relations Commission modified the judgment of the Labor Arbiter. It declared that private respondent was an employee, not an industrial partner, since the start. Private respondent Sahot did not abandon his job but his employment was terminated on account of his illness, pursuant to Article 284[9] of the Labor Code. Accordingly, the NLRC ordered petitioners to pay private respondent separation pay in the amount of P60,320.00, at the rate of P2,080.00 per year for 29 years of service.

Petitioners assailed the decision of the NLRC before the Court of Appeals. In its

decision dated February 29, 2000, the appellate court affirmed with modification the judgment of the NLRC. It held that private respondent was indeed an employee of petitioners since 1958. It also increased the amount of separation pay awarded to private respondent to P74,880, computed at the rate of P2,080 per year for 36 years of service from 1958 to 1994. It decreed:

> WHEREFORE, the assailed decision is hereby AFFIRMED with MODIFICATION. SB Trucking Corporation is hereby directed to pay complainant Jaime Sahot the sum of SEVENTY-FOUR THOUSAND EIGHT HUNDRED EIGHTY (P74,880.00) PESOS as and for his separation pay.[10]

Hence, the instant petition anchored on the following contentions:

> I
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> RESPONDENT COURT OF APPEALS IN PROMULGATING THE QUESTION[ED] DECISION AFFIRMING WITH MODIFICATION THE DECISION OF NATIONAL LABOR RELATIONS COMMISSION DECIDED NOT IN ACCORD WITH LAW AND PUT AT NAUGHT ARTICLE 402 OF THE CIVIL CODE.[11]
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> II
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> RESPONDENT COURT OF APPEALS VIOLATED SUPREME COURT RULING THAT THE NATIONAL LABOR RELATIONS COMMISSION IS BOUND BY THE FACTUAL FINDINGS OF THE LABOR ARBITER AS THE LATTER WAS IN A BETTER POSITION TO OBSERVE THE DEMEANOR AND DEPORTMENT OF THE WITNESSES IN THE CASE OF ASSOCIATION OF INDEPENDENT UNIONS IN THE PHILIPPINES VERSUS NATIONAL CAPITAL REGION (305 SCRA 233).[12]
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> III
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> PRIVATE RESPONDENT WAS NOT DISMISS[ED] BY RESPONDENT SBT TRUCKING CORPORATION.[13]

Three issues are to be resolved: (1) Whether or not an employer-employee relationship existed between petitioners and respondent Sahot; (2) Whether or not there was valid dismissal; and (3) Whether or not respondent Sahot is entitled to separation pay.

Crucial to the resolution of this case is the determination of the first issue. Before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.[14]

Petitioners invoke the decision of the Labor Arbiter Ariel Cadiente Santos which found that respondent Sahot was not an employee but was in fact, petitioners' industrial partner.[15] It is contended that it was the Labor Arbiter who heard the case and had the opportunity to observe the demeanor and deportment of the parties. The same conclusion, aver petitioners, is supported by substantial evidence.[16] Moreover, it is argued that the findings of fact of the Labor Arbiter was wrongly overturned by the NLRC when the latter made the following pronouncement:

> We agree with complainant that there was error committed by the Labor Arbiter when he concluded that complainant was an industrial partner prior to 1994. A computation of the age of complainant shows that he was only twenty-three (23) years when he started working with respondent as truck helper. How can we entertain in our mind that a twenty-three (23) year old man, working as a truck helper, be considered an industrial partner. Hence we rule that complainant was only an employee, not a partner of respondents from the time complainant started working for respondent.[17]

Because the Court of Appeals also found that an employer-employee relationship existed, petitioners aver that the appellate court's decision gives an "imprimatur" to the "illegal" finding and conclusion of the NLRC.

Private respondent, for his part, denies that he was ever an industrial partner of petitioners. There was no written agreement, no proof that he received a share in petitioners' profits, nor was there anything to show he had any participation with respect to the running of the business.[18]

The elements to determine the existence of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it.[19]

As found by the appellate court, petitioners owned and operated a trucking business since the 1950s and by their own allegations, they determined private respondent's wages and rest day.[20] Records of the case show that private respondent actually engaged in work as an employee. During the entire course of his employment he did not have the freedom to determine where he would go, what he would do, and how he would do it. He merely followed instructions of petitioners and was content to do so, as long as he was paid his wages. Indeed, said the CA, private respondent had worked as a truck helper and driver of petitioners not for his own pleasure but under the latter's control.

Article 1767[21] of the Civil Code states that in a contract of partnership two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves.[22] Not one of these circumstances is present in this case. No written agreement exists to prove the partnership between the parties. Private respondent did not contribute money, property or industry for the purpose of engaging in the supposed business. There is no proof that he was receiving a share in the profits as a matter of course, during the period when the trucking business was under operation. Neither is there any proof that he had actively participated in the management, administration and adoption of policies of the business. Thus, the NLRC and the CA did not err in reversing the finding of the Labor Arbiter that private respondent was an industrial partner from 1958 to 1994.

On this point, we affirm the findings of the appellate court and the NLRC. Private respondent Jaime Sahot was not an industrial partner but an employee of

petitioners from 1958 to 1994. The existence of an employer-employee relationship is ultimately a question of fact[23] and the findings thereon by the NLRC, as affirmed by the Court of Appeals, deserve not only respect but finality when supported by substantial evidence. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[24]

Time and again this Court has said that "if doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter."[25] Here, we entertain no doubt. Private respondent since the beginning was an employee of, not an industrial partner in, the trucking business.

Coming now to the second issue, was private respondent validly dismissed by petitioners?

Petitioners contend that it was private respondent who refused to go back to work. The decision of the Labor Arbiter pointed out that during the conciliation proceedings, petitioners requested respondent Sahot to report back for work. However, in the same proceedings, Sahot stated that he was no longer fit to continue working, and instead he demanded separation pay. Petitioners then retorted that if Sahot did not like to work as a driver anymore, then he could be given a job that was less strenuous, such as working as a checker. However, Sahot declined that suggestion. Based on the foregoing recitals, petitioners assert that it is clear that Sahot was not dismissed but it was of his own volition that he did not report for work anymore.

In his decision, the Labor Arbiter concluded that:

> While it may be true that respondents insisted that complainant continue working with respondents despite his alleged illness, there is no direct evidence that will prove that complainant's illness prevents or incapacitates him from performing the function of a driver. The fact remains that complainant suddenly stopped working due to boredom or otherwise when he refused to work as a checker which certainly is a much less strenuous job than a driver.[26]

But dealing the Labor Arbiter a reversal on this score the NLRC, concurred in by the Court of Appeals, held that:

> While it was very obvious that complainant did not have any intention to report back to work due to his illness which incapacitated him to perform his job, such intention cannot be construed to be an abandonment. Instead, the same should have been considered as one of those falling under the just causes of terminating an employment. The insistence of respondent in making complainant work did not change the scenario.
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> It is worthy to note that respondent is engaged in the trucking business where physical strength is of utmost requirement (sic). Complainant started working with respondent as truck helper at age twenty-three (23), then as truck driver since 1965. Complainant was already fifty-nine (59) when the complaint was filed and suffering from various illness triggered by his work and age.