377 Phil. 55

THIRD DIVISION

[G.R. No. 114671, November 24, 1999]

AURELIO SALINAS, JR., ARMANDO SAMULDE, ALEJANDRO ALONZO AND AVELINO CORTEZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ATLANTIC GULF AND PACIFIC CO. OF MANILA, INC., RESPONDENTS.

D E C I S I O N

PURISIMA, J.:

This petition for review should have been properly initiated and is therefore treated as a special civil action for *certiorari* under Rule 65. The herein petitioners, Aurelio Salinas, Jr., Armando Samulde, Alejandro Alonzo and Avelino Cortez, assail the Resolution[1] dated January 31, 1994 of the National Labor Relations Commission (NLRC, for brevity) which dismissed their complaint, and affirming, in effect, the Decision[2] of the Labor Arbiter declaring them project employees and not regular employees of respondent Atlantic Gulf and Pacific Company of Manila, Inc. (hereinafter referred to as AG & P).

Petitioner Alejandro Alonzo had been employed with AG & P in the several construction projects of the latter from 1982 to 1989, in the course of which he essentially performed the same job, initially as a laborer, and later as bulk cement operator, bulk cement plant/carrier operator, and crane driver. Under similar circumstances, petitioner Avelino Cortez had been employed with AG & P from 1979 to 1988 as carpenter/forklift operator; petitioner Armando Samulde served as lubeman/stationary operator from 1982 to 1989; while petitioner Aurelio Salinas, Jr., used to work as carpenter/finishing carpenter from 1983 to 1988.

On May 29, June 6, July 4 and July 5 of 1989, respectively, petitioners Salinas, Samulde, Alonzo and Cortez filed against the respondent corporation separate complaints for illegal dismissal, which cases were consolidated and jointly heard by Labor Arbiter Manuel P. Asuncion.

In his Order of dismissal, Labor Arbiter Asuncion found that petitioners are project employees whose work contracts with AG & P indicate that they were employed in such category; that they have been assigned to different work projects, not just to one and that their work relation with AG & P, relative to termination, is governed by Policy Instruction No. 20.

On appeal, NLRC affirmed the said findings of the Labor Arbiter and dismissed the complaint for want of merit, ratiocinating thus:

> "In the first place, examining the contract of employment of complainants herein presented as evidence by respondent, we found that a) they were employed for a specific project and for a specific period; b)

> that they were assigned to different projects and not just one as earlier claimed by them. In short, from the evidence adduced by respondent which complainants miserably failed to rebut with their one page position paper containing sweeping statements, there appears to be no doubt that they are project employees hired for a specific project. Their subsequent separation from service, therefore, as a result of the completion of the project or its phase did not result in illegal dismissal."[3]

Dissatisfied with the aforesaid disposition below, petitioners found their way to this Court *via* the present petition posing as the sole issue whether they are regular or project employee.

Petitioners principally argue that following the ruling in the *Caramol* case,[4] NLRC gravely erred in dismissing their complaint and declaring them project employees. According to them, they had been covered by a number of contracts renewed continuously, with periods ranging from five (5) to nine (9) years, and they performed the same kind of work through out their employment, and such was usually necessary and desirable in the trade or business of the respondent corporation; and their work did not end on a project-to-project basis, although the contrary was made to appear by the employer through the signing of separate employment contracts.

Petitioners emphatically stressed that no report even a single one, was ever submitted by the respondent corporation to the nearest public employment office every time petitioners' employment was terminated pursuant to Policy Instruction No. 20. There being no report, NLRC's insistence that they (petitioners) were respondents corporation's project employees is without any legal basis; petitioners maintain.

In its Manifestation and Motion in Lieu of Comment,[5] the Office of the Solicitor General agrees with the contention of petitioners, to wit:

> "5. Thus, since petitioners had continuously performed the same kind of work during the whole course of their employment x x x their jobs were indeed necessary and desirable to the private respondent's main line of business. And this should be the main consideration in classifying the nature of employment afforded the herein workers.
>
> "6. Furthermore, if private respondent really employed the herein petitioners on a project-to-project basis, it should have submitted a series of reports to the nearest public employment office every time the employment of the workers were terminated, in line with Policy Instruction No. 20 of the Department of Labor. (citation omitted) Private respondent miserably failed to do its obligation under the set-up. This failure effectively belies its assertion that herein petitioners are project employees."[6]

Respondent corporation preliminary contends that the present petition for review should have been brought under Rule 65, Rule 45 not being the proper remedy. Assuming *arguendo* that the petition should be treated under Rule 65, the petition would still fail for failure of the petitioners to present a motion for reconsideration. It maintains that the instant petition should not be given due course due to non-

exhaustion of administrative remedies as required by Section 14, Rule VII (sic). It theorizes further that the questioned Resolution had already become final and executory on March 20, 1994, ten days after receipt thereof by petitioners on March 9, 1994. Respondent corporation also claims that the present petition is insufficient in form, for failure to attach thereto a duplicate original or certified true copies of the complainants-petitioners' position paper, respondent corporation's position paper, and the questioned resolution of the public respondent.

AG & P staunchly claims that the petitioners are mere project employees; that the questioned resolution of public respondent is supported by substantial evidence and therefore, conclusive and binding. According to respondent corporation, factual findings of the NLRC are generally accorded not only respect but, at times, finality as long as such findings are based on substantial evidence; that the doctrinal cases cited by petitioners have no applicability in the case under scrutiny and that the *Magante* case[7] does not apply because it was therein established that Magante was never deployed from project to project but had been regularly assigned to perform carpentry work; and on the other hand, the *Baguio Country Club* case[8] pertains to "entertainment-service."

Meanwhile the *De Leon* case,[9] claims the respondent corporation, bolsters instead, its position since it recognizes the legality of project employment, which is not deemed regular but a separate and distinct category, particularly in the construction business. It also attempts to create a chasm between the doctrinal case of *Caramol* and the present case, allegedly due to different circumstances involved, and citing the implementation of Department Order No. 19, amending Policy Instruction No. 20, which allows the rehiring of project workers on a project-to-project basis (Section 2.3.b), and which considers the report of termination of employment a mere "indicator" of project employment. (Section 2.2)

The petition is impressed with merit.

The present case is on all fours with the cases of *Caramol vs. NLRC* (penned by Justice Bellosillo) and *Samson vs. NLRC*[10] (with Justice Regalado as *ponente*), both of which involved the same private respondent.

In the case of *Caramol*, petitioner Rogelio Caramol was hired as a rigger by AG & P on a "project-to-project" basis but whose employment was renewed forty-four (44) times by the latter. In holding that Caramol was a regular worker, the Court declared that the successive employment contracts where he was made to perform the same kind of work as a rigger, would clearly manifest that Caramol's tasks were usually necessary or desirable in the usual trade or business of AG & P.[11]

The Court likewise upheld the validity of a "project-to-project" basis contract of employment, provided that "the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure 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 xxx."[12] However, this Court warned, where from the circumstances it is apparent that periods have been imposed to preclude the acquisition of tenurial security by the employee, they should be struck down as contrary to public policy,