352 Phil. 252

FIRST DIVISION

[G.R. No. 118695, April 22, 1998]

CEBU ENGINEERING AND DEVELOPMENT COMPANY, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND JAIME PEREZ, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

ASSERTING grave abuse of disretion amounting to lack or excess of jurisdiction, petitioner seeks to annul the decision of the National Labor Relations Commission (NLRC) finding it liable for illegal dismissal and damages.

In the first week of November 1991 private respondent Jaime Perez was hired as clerk for ₱120.00 a day by Cebu Engineering and Development Company (CEDCO) which was engaged in the business of providing engineering infrastructure, designing and consultancy services to construction and development projects. His first assignment was to the Metro Cebu Development Project (MCDP) II. In the last week of May 1992, when the field teams of petitioner were reduced to only two (2), he was reassigned to MCDP III effective 1 June 1992.

On 16 December 1992 private respondent was ordered by his supervisor, a certain Ms. Tudtud, to drive an engineer and her team to the job site but Perez refused because, according to him, the car could only be used by the President of the company or by one specifically authorized by him, and also, the rental contracts of the vehicles restricted the use of the car to only those authorized and the engineer was not.

On 23 December 1992 respondent Perez was summoned by Mr. Butalid, CEDCO Vice President for Administration and Finance, to the latter's office and asked why he did not comply with the order of Ms. Tudtud. After a confrontation with Ms. Tudtud, the project accountant, and one Ramon Pernea, Perez was given a notice of recall and a notice of termination at the same time. Resisting his recall and termination, Perez filed a case for illegal dismissal with the Labor Arbiter's office.

On 4 January 1994 Labor Arbiter Nicasio C. Aninon ruled that private respondent's employment was not regular and was merely coterminous with the MCDP project which was already completed as of 30 June 1993. The Labor Arbiter however found the dismissal to be groundless and granted Perez back wages from the time of termination up to the time of completion of the project. The award of back wages however was reduced to only three (3) months because he found Mr. Perez not entirely blameless for his recall and termination.[2]

Both parties appealed to the NLRC. On 17 November 1994 the NLRC reversed the Labor Arbiter's decision on the status of Perez' employment and found him to be a regular employee, affirmed the finding of illegal dismissal and ordered his reinstatement. It expanded the award of back wages from the time of dismissal not only until completion of the MCDP III but until his actual reinstatement. The NLRC also

ordered that in the event reinstatement was impossible or impracticable, CEDCO was also directed to give separation pay of one (1) month for every year of service.[3]"

Petitioner's motion for reconsideration was denied; hence, this petition raising the issue of whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction: (a) in finding private respondent a regular employee, contrary to the decision of the Labor Arbiter; (b) in disregarding the numerous infractions constituting just cause for termination or discontinuance of Perez' employment with CEDCO; (c) in ordering the reinstatement of Perez although the remedy was not sought for in his appeal and comment and/or answer to CEDCO's partial appeal; and, (d) in awarding back wages to Perez even after 30 June 1993, the date of completion of the MCDP III.[4]"

The petition is without merit.

Petitioner insists that respondent Perez was a project employee who was first hired for a fixed period from November 1991 to May 1992 but was unable to finish his term because he had to go to Manila to attend to some personal matters. When he reapplied the company only accommodated him out of kindness. This time he was assigned to MCDP III. Petitioner offered as evidence Perez' notarized contract for personal services duly signed by him which stipulated that his employment was from 1 June 1992 to 30 November 1992. Thus Perez was merely a project employee and his term of employment was coterminous with the existence of the project.

We do not agree. It is not disputed that private respondent started working with petitioner in November 1991 and continued to do so until 16 December 1992. There is no evidence to prove petitioner's allegation that private respondent preterminated his employ in May of 1992. The records do not show any resignation letter. Neither does the contract for personal services purportedly signed by private respondent conclusively establish a casual employment. On the contrary, we have oftentimes regarded such contract as an employer's device for circumventing the employee's right to security of tenure. Hence, it does not matter that the employee signs a contract for personal services in which is stipulated the temporary period of his employment. What determines the regularity of one's employment is whether he was engaged to perform activities which are necessary and desirable in the usual business or trade of the employer. And indeed private respondent's employ was vital to the company as evidenced by the memorandum sent to him by the Vice President when he was assigned to MCDP III. Thus he was instructed to "abide by the rules and regulations of the project office without abdicating your role as a responsible corporate member of CEDCO Inc."[5] (*underscoring supplied*).

Private respondent belonged to a work pool from which CEDCO drew its employees and assigned them to different projects.[6]" He was not hired for a specific project. He was a regular employee to different projects. He was in fact a mainstay of the company. Contrary to petitioner's claim, his services were not terminated on 30 November 1992. He continued working after that. Hence, according to the law, on 1 December 1992, after a year of continuous work, he became a regular employee regardless of any contract to the contrary. It is in keeping with the intent and spirit of the law to rule that the status of regular employment attaches to the casual worker on the day immediately after the end of the first year of service.[7]"