355 Phil. 835

SECOND DIVISION

[G.R. No. 122327, August 19, 1998]

ARTEMIO J. ROMARES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PILMICO FOODS CORPORATION, RESPONDENTS.

D E C I S I O N

MARTINEZ, J.:

This is a case of illegal dismissal. The decision of the Executive Labor Arbiter[1] einstating petitioner was reversed by the National Labor Relations Commission. Hence, this appeal.

The antecedent facts as summarized in the decision of the Executive Labor Arbiter are as follows:

> "Complainant in his Complaint and Position Paper alleged that he was hired by respondent in its Maintenance/Projects/Engineering Department during the periods and at respective rates as follows:
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> 1. Sept. 1, 1989 to Jan. 31, 1990 - P 89.00/day
> 2. Jan.16, 1991 to Jun. 15, 1991 - 103.00/day
> 3. Aug. 16, 1992 to Jan. 15, 1993 - 103.00/day
>
> "That having rendered a total service of more than one (1) year and by operation of law, complainant has become a regular employee of respondent; That complainant has performed tasks and functions which were necessary and desirable in the operation of respondent's business which include painting, maintenance, repair and other related jobs; That complainant was never reprimanded nor subjected to any disciplinary action during his engagement with the respondent; That without any legal cause or justification and in the absence of any time to know of the charge or notice nor any opportunity to be heard, respondent terminated him; That his termination is violative to security of tenure clause provided by law; That complainant be awarded damages and prays that he be reinstated to his former position, be awarded backwages, moral and exemplary damages and attorney's fees.
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> "Respondent on the other hand maintains that complainant was a former contractual employee of respondent and as such his employment was covered by contracts; That complainant was hired as mason in the Maintenance/Project Department and that he was engaged only for a specific project under such department; That complainant's services as mason was not continuous, in fact, he was employed with International Pharmaceuticals, Inc. in Opol, Misamis Oriental from January to April 1992; That when his last contract expired on January 15, 1993, it was no

longer renewed and thereafter, complainant filed this instant complaint; he prays that this instant petition be dismissed for lack of merit."[2]

In finding that petitioner is a regular employee, the Executive Labor Arbiter said:

"The records reveal that complainant has been hired and employed by respondent PILMICO since September 1, 1989 to January 15, 1993, in a broken tenure but all in all totalled to over a year's service. Complainant's period of employment started on September 1, 1989 up to January 31, 1990 or for a period of five (5) months. Then on January 16, 1991, he was hired again up to June 15, 1991, or for a period covering another five (5) months. Then on August 16, 1992, he was hired again up to January 15, 1993 or for a period of another five (5) months. Thus, from September 1, 1989 up to January 15, 1993, complainant has worked for fifteen (15) months more or less and has been hired and terminated three times. But in all his engagements by respondent, he was assigned at respondent's Maintenance/Projects/Engineering Department performing maintenance work, particularly the painting of company buildings, maintenance chores, like cleaning and sometimes operating company equipment and sometimes assisting the regulars in the Maintenance/Engineering Department. The fact that complainant was hired, terminated and rehired again for three times in a span of more than three (3) years and performing the same functions, only bolstered our findings that complainant is already considered a regular employee and therefore covered by security of tenure and cannot be removed except for lawful and valid cause as provided by law and after due process. There is no dispute that complainant, in the case at bar, has already served respondent for more than six (6) months, the period allowable for probationary period and even more than one year service which under the law shall be considered a regular employee. This finding and conclusion finds application in the case of Kimberly Independent Labor Union for Solidarity, Activism and Nationalism - Olalia v. Hon. Franklin M. Drilon, G.R. No. 77629 and 78791, promulgated last May 9, 1990, wherein the Honorable Supreme Court has classified the two kinds of regular employees as:

> 1. those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and,
>
> 2. those who have rendered at least one (1) year of service whether continuous or broken with respect to the activity in which they are employed.

"While the actual regularization of the employees entails the mechanical act of issuing regular appointment papers and compliance with such other operating procedures, as may be adopted by the employer, it is more in keeping with the intent and spirit of the law to rule that the status of regular employment attaches to the casual employee on the day immediately after the end of his first year of service.

"Applying the above classification in this particular case, there is no doubt that herein complainant falls within the second classification and as such,

he is a regular employee of respondent PILMICO. And being a regular employee, he is vested with his constitutional right to due process before he can be terminated from his work and only for valid and lawful cause as provided by law. xxx. In the case of National Service Corporation v. NLRC, 168 SCRA 122, the Court has laid down the guidelines or requisites to be complied in order that termination of employment can be legally effected, to wit:

"These are:

1. the notice which apprises the employee of the particular acts or omissions for which his dismissal is sought, and

2. the subsequent notice which informs the employee of the employer's decision to dismiss him.

x x x x x x x x x

"In the case at bar, respondent did not comply with the above guidelines for the dismissal of herein complainant. The procedure prescribed by law is mandatory. Unless followed, the employee's right to due process of law is breached and vitiates management's decision to terminate the employment.

"This ELA having declared herein complainant as a regular employee as above stated, then his separation or termination from respondent company not being in consonance with the guidelines enunciated by law, his termination is therefore illegal."[3]

and thereafter disposed of the case as follows:

"WHEREFORE, in the light of the above-discussion, it is hereby declared and ordered that complainant ARTEMIO J. ROMARES is a regular employee of respondent PILMICO FOODS CORPORATION since January 16, 1993 and his termination on the same date is illegal as contrary to law and public policy and therefore, he would be reinstated to his former position as if he was not terminated and to be entitled to all benefits, allowances accruing thereto and without loss of seniority rights.

"Likewise, respondent PILMICO in consonance with the above-discussion is hereby ordered to pay complainant the following, to wit:

1. Backwages in the amount of P34,814.00;

2. Attorney's fees representing 5% of the amount awarded for backwages, allowances and other benefits.

3. All other claims are hereby dismissed for lack of merit.

SO ORDERED."[4]

On appeal, the NLRC[5] set aside the decision of the Executive Labor Arbiter and ruled:

"Respondent argues that even if the employee was performing work which is related to the business or trade of the employer, the employee cannot be considered a regular employee if his employment is for a specific project or undertaking and for a fixed period (Vol. 1, p. 26, supra), hence, the applicable provision is paragraph 1 and not paragraph 2 of Article 280 of the Labor Code, as amended (Vol. 2, p. 5, supra).

"With the given circumstances, we cannot agree with the pronouncement of the Executive Labor Arbiter that it is the intent and spirit of the law that the status of regular employment is attached to the worker on the day immediately after the end of his first year of service (Vol. 1, p. 50, supra).

"What is apparently applicable in the case at bar is paragraph 1 of Article 280 of the Labor Code, as amended. As clearly shown by evidence, complainant's employment contracts (Vol. 1, pp.39-40, supra), were for fixed or temporary periods. Thus, when complainant's employment with respondent was terminated (Vol. 1, p. 41, supra), such cannot be considered as illegal since the termination was due to the expiration of the contract.

"WHEREFORE, the assailed decision is Vacated and Set Aside. The complaint is hereby Dismissed for lack of merit.

SO ORDERED."[6]

The motion for reconsideration having been denied, petitioner interposed this petition for *certiorari* and prohibition.

We find the petition meritorious.

Petitioner seeks to traverse the NLRC's ruling that the applicable provision in the case at bar is paragraph 1 of Article 280 of the Labor Code, as amended. In this regard, the NLRC concluded that since petitioner's employment contracts were for fixed or temporary periods, as an exception to the general rule, he was validly terminated due to expiration of the contract of employment.

In determining the status of petitioner as a regular employee, reference is made to Article 280 of the Labor Code, as amended.[7] Thus, the two kinds of regular employees are (1) those who are engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.[8]

Construing the aforesaid provision, the phrase "usually necessary or desirable in the usual business or trade of the employer" should be emphasized as the criterion in the instant case. Facts show that petitioner's work with PILMICO as a mason was definitely necessary and desirable to its business. PILMICO cannot claim that petitioner's work as a mason was entirely foreign or irrelevant to its line of business in the production of flour, yeast, feeds and other flour products.

The language of the law evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of lopsided agreements with the economically powerful employer