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FIRST DIVISION

[G.R. No. 122653, December 12, 1997]

PURE FOODS CORPORATON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, RODOLFO CORDOVA, VIOLETA CRUSIS, ET AL.,* RESPONDENTS.
D E C I S I O N

DAVIDE, JR., J.:

The crux of this petition for *certiorari* is the issue of whether employees hired for a definite period and whose services are necessary and desirable in the usual business or trade of the employer are regular employees.

The private respondents (numbering 906) were hired by petitioner Pure Foods Corporation to work for a fixed period of five months at its tuna cannery plant in Tambler, General Santos City. After the expiration of their respective contracts of employment in June and July 1991, their services were terminated. They forthwith executed a "Release and Quitclaim" stating that they had no claim whatsoever against the petitioner.

On 29 July 1991, the private respondents filed before the National Labor Relations Commission (NLRC) Sub-Regional Arbitration Branch No. XI, General Santos City, a complaint for illegal dismissal against the petitioner and its plant manager, Marciano Aganon. [1] This case was docketed as RAB-11-08-50284-91.

On 23 December 1992, Labor Arbiter Arturo P. Aponesto handed down a decision [2] dismissing the complaint on the ground that the private respondents were mere contractual workers, and not regular employees; hence, they could not avail of the law on security of tenure. The termination of their services by reason of the expiration of their contracts of employment was, therefore, justified. He pointed out that earlier he had dismissed a case entitled "Lakas ng Anak-Pawis- NOWM v. Pure Foods Corp." (Case No. RAB-11-02-00088-88) because the complainants therein were not regular employees of Pure Foods, as their contracts of employment were for a fixed period of five months. Moreover, in another case involving the same contractual workers of Pure Foods (Case No. R-196-ROXI- MED- UR-55-89), then Secretary of Labor Ruben Torres held, in a Resolution dated 30 April 1990, that the said contractual workers were not regular employees.

The Labor Arbiter also observed that an order for private respondents' reinstatement would result in the reemployment of more than 10,000 former contractual employees of the petitioner. Besides, by executing a "Release and Quitclaim," the private respondents had waived and relinquished whatever right they might have against the petitioner.

The private respondents appealed from the decision to the National Labor Relations Commission (NLRC), Fifth Division, in Cagayan de Oro City, which docketed the case

as NLRC CA No. M-001323-93.

On 28 October 1994, the NLRC affirmed the Labor Arbiter's decision. [3] However, on private respondents' motion for reconsideration, the NLRC rendered another decision on 30 January 1995 [4] vacating and setting aside its decision of 28 October 1994 and holding that the private respondents and their co-complainants were regular employees. It declared that the contract of employment for five months was a "clandestine scheme employed by [the petitioner] to stifle [private respondents'] right to security of tenure" and should therefore be struck down and disregarded for being contrary to law, public policy, and morals. Hence, their dismissal on account of the expiration of their respective contracts was illegal.

Accordingly, the NLRC ordered the petitioner to reinstate the private respondents to their former position without loss of seniority rights and other privileges, with full back wages; and in case their reinstatement would no longer be feasible, the petitioner should pay them separation pay equivalent to one-month pay or one-half-month pay for every year of service, whichever is higher, with back wages and 10% of the monetary award as attorney's fees.

Its motion for reconsideration having been denied,[5] the petitioner came to this Court contending that respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction in reversing the decision of the Labor Arbiter.

The petitioner submits that the private respondents are now estopped from questioning their separation from petitioner's employ in view of their express conformity with the five-month duration of their employment contracts. Besides, they fell within the exception provided in Article 280 of the Labor Code which reads: "[E]xcept where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee."

Moreover, the first paragraph of the said article must be read and interpreted in conjunction with the proviso in the second paragraph, which reads: "Provided that any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed...." In the instant case, the private respondents were employed for a period of five months only. In any event, private respondents' prayer for reinstatement is well within the purview of the "Release and Quitclaim" they had executed wherein they unconditionally released the petitioner from any and all other claims which might have arisen from their past employment with the petitioner.

In its Comment, the Office of the Solicitor General (OSG) advances the argument that the private respondents were regular employees, since they performed activities necessary and desirable in the business or trade of the petitioner. The period of employment stipulated in the contracts of employment was null and void for being contrary to law and public policy, as its purpose was to circumvent the law on security of tenure. The expiration of the contract did not, therefore, justify the termination of their employment.

The OSG further maintains that the ruling of the then Secretary of Labor and

Employment in LAP-NOWM v. Pure Foods Corporation is not binding on this Court; neither is that ruling controlling, as the said case involved certification election and not the issue of the nature of private respondents' employment. It also considers private respondents' quitclaim as ineffective to bar the enforcement for the full measure of their legal rights.

The private respondents, on the other hand, argue that contracts with a specific period of employment may be given legal effect provided, however, that they are not intended to circumvent the constitutional guarantee on security of tenure. They submit that the practice of the petitioner in hiring workers to work for a fixed duration of five months only to replace them with other workers of the same employment duration was apparently to prevent the regularization of these so-called "casuals," which is a clear circumvention of the law on security of tenure.

We find the petition devoid of merit.

Article 280 of the Labor Code defines regular and casual employment as follows:

> ART. 280. Regular and Casual Employment.-- The provisions of written agreement to the contrary notwithstanding and regardless of the oral argument of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the preceding paragraph; Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

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.[6]

In the instant case, the private respondents' activities consisted in the receiving, skinning, loining, packing, and casing-up of tuna fish which were then exported by the petitioner. Indisputably, they were performing activities which were necessary and desirable in petitioner's business or trade.

Contrary to petitioner's submission, the private respondents could not be regarded as having been hired for a specific project or undertaking. The term "specific project or undertaking" under Article 280 of the Labor Code contemplates an activity which is not commonly or habitually performed or such type of work which is not done on