325 Phil. 663

[SYLLABUS]

[G.R. No. 106600, March 29, 1996]

COSMOS BOTTLING CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND GIL C. CASTRO, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

Gil C. Castro was employed by Cosmos Bottling Corporation for a specific period from September 5, 1988 to October 4, 1988. He was re-hired for another specific period from May 30, 1989 to November 6, 1989.[1]

Having satisfactorily served the company for two (2) terms, Castro was recommended for reemployment with the company's Maintenance Team for the Davao Project on November 22, 1989.[2] On December 22, 1989, he was re-hired and assigned to the Maintenance Division of the Davao Project tasked to install the private respondent's annex plant machines in its Davao plant.[3]

On May 21, 1990, Castro's employment was terminated due to the completion of the special project.

Meanwhile, on May 27, 1990, Cosmos Bottling Corporation in valid exercise of its management prerogative terminated the services of some 228 regular employees by reason of retrenchment.[4] For obvious reasons,[5] Castro was not among the list of those regular employees whose services were terminated by reason of retrenchment or those who voluntarily resigned.

On May 25, 1990, Castro filed a complaint for illegal dismissal against Cosmos Bottling Corporation with the Labor Arbiter contending that being a regular employee, he could not be dismissed without a just and valid cause. The case was docketed as NLRC-NCR Case No. 00-05-02902-90.

On its part, the company alleged that Castro was a mere project employee whose employment was co-terminous with the project for which he was hired.

After the parties submitted their respective position papers, reply and rejoinder thereto, the Labor Arbiter rendered a decision on March 13, 1991 finding Castro a regular employee but ruling that his employment was validly terminated because of retrenchment. Hence, Castro was awarded 45-days separation pay, one (1) month salary as financial assistance and proportionate 13th month pay. The dispositive portion of the decision reads:

> Premises considered, COSMOS is hereby directed to pay complainant's compensation package in the total amount of P11,231.83 by reason of

the retrenchment.

The charge of illegal dismissal is hereby DISMISSED for lack of merit.

SO ORDERED.[6]

Both parties appealed the decision to the National Labor Relations Commission (NLRC) which rendered the assailed decision dated June 10, 1992, the decretal portion of which reads:

> ACCORDINGLY, the decision appealed from is hereby modified to the effect that respondent is declared guilty of illegal dismissal and is hereby ordered to reinstate complainant to his former position as equivalent one without loss of seniority and other benefits and to pay him backwages computed from the time of his dismissal up to the time of his reinstatement.
>
> SO ORDERED.[7]

Cosmos Bottling Corporation's motion for reconsideration of the above decision having been denied, the instant petition for certiorari was filed.

Petitioner argues that private respondent was a mere project employee and that his services were co-terminous with the project, hence, may be terminated upon the end or completion of the project for which he was hired. Respondent NLRC and private respondent, on the other hand, maintain that private respondent is a regular employee of petitioner company because his job is necessary and desirable to the petitioner's main business. The Office of the Solicitor General filed a Manifestation in Lieu of Comment and supported petitioner's contention that private respondent is not a regular employee.

The pivotal issue therefore is whether or not private respondent Gil C. Castro is a regular employee or was a mere project employee of petitioner Cosmos Bottling Corporation.

After a careful examination of the records of the case, we find merit in the petition and hold that respondent NLRC gravely abused its discretion when it rendered the challenged decision finding private respondent a regular employee.

Article 280 of the Labor Code which defines regular, project and casual employment is applicable here. The same reads in full:

> Article 280. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement 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.

> 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 actually exists.

The first paragraph provides that regardless of any written or oral agreement to the contrary, an employee is deemed regular where he is engaged in necessary or desirable activities in the usual trade or business of the employer.

A project employee, on the other hand, has been defined to be one whose 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 service to be performed is seasonal in nature and the employment is for the duration of the season.

The second paragraph of the provision defines casual employees as those who do not fall under the definition of the first paragraph.

However, with respect to the first two kinds of employees, the principal test for determining whether an employee is a project employee or a regular employee is whether or not the project employee was assigned to carry out a "specific project or undertaking," the duration and scope of which were specified at the time the employee was engaged for that period.

In a recent case[8] decided by this Court, the nature of project employment was explained. We noted that in the realm of business and industry, "project" could refer to at least two (2) distinguishable types of activities. First, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. Second, a project could also refer to a particular job or undertaking that is not within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times.[9]

The case at bar presents what appears, to our mind, as a typical example of the first type. Petitioner Cosmos Bottling Corporation is a duly organized corporation engaged in the manufacture, production, bottling, sale and distribution of beverage. In the course of its business, it undertakes distinct identifiable projects as it did in the instant case when it formed special teams assigned to install and dismantle its annex plant machines in various plants all over the country. These projects are distinct and separate, and are identifiable as such, from its usual business of bottling beverage. Their duration and scope are made known prior to their undertaking and their specified goal and purpose are fulfilled once the projects are completed. When private respondent was initially hired for a period of one month and re-hired for another five months, and then subsequently re-hired for another five months, he was assigned to the petitioner’s Maintenance Division tasked with the installation and dismantling of its annex plant machines.[10] Evidently, these