

THIRD DIVISION

[CA-G.R. SP No. 133639, January 27, 2015]

ROBERTO A. CALIP, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), LHP TRADING & LABOR SERVICES AND/OR SAN MIGUEL FOODS, INC.,/ERNESTO EBRADA , RESPONDENTS.

DECISION

GONZALES-SISON, M., J.:

Before this Court is a Petition for *Certiorari*^[1] which seeks to reverse and set aside the decision^[2] and resolution^[3] of the National Labor Relations Commission First Division in NLRC LAC No. 02-000542-13 (NLRC Case No. SUB RAB 1-7-01-184-12) dated 18 June 2013 and 30 October 2013 respectively.

Briefly, the facts of the case are as follows:

Private respondent LHP Trading & Labor Service (LHP) is a manpower agency owned by private respondent Ernesto Ebrada with business address at Bued, Binalonan, Pangasinan. Meanwhile, private respondent San Miguel Foods Incorporated (SMFI) is a domestic corporation engaged in poultry, meats and feeds business and is the owner of B-Meg Plant in Binalonan, Pangasinan.

On the other hand, petitioner Roberto A. Calip (Calip) was employed by LHP to work as a laborer for SMFI. Calip claims that he was hired in 1999 until he was dismissed in October 2009. According to Calip he worked with varying schedule from Monday to Saturday for twelve hours. He was paid on a per piece basis, which started at 60 centavos per bag of feeds or other products with 50 kilos weight. This was later on increased to 80 centavos per bag.

On 9 October 2009, Calip allegedly reported to his usual work in the B-Meg Plant in Binalonan, Pangasinan but was refused entry by a certain "Jerrold", an LHP checker. Calip returned the next day and was told to secure the necessary papers, such as bio-data with picture for him to resume work with B-Meg. Despite submitting the same, Calip was no longer notified to report to work, hence, on 24 January 2012, a case was filed by him against the private respondents before the National Labor Relations Commission Sub-Regional Arbitration Branch No. 1 in Dagupan City for illegal dismissal, non-payment of separation pay, backwages, underpayment of salaries, non-payment of overtime pay, 13th month pay, service incentive leave pay, holiday pay, rest day pay, as well as moral and exemplary damages including attorney's fees.

In its position paper,^[4] SMFI defended itself by arguing that Calip was never its employee but that of LHP, a legitimate independent contractor. Hence, SMFI averred that it could not have dismissed Calip from service as there was no employer-

employee relationship between them to begin with. Moreover, SMFI contended that the claims of Calip have already prescribed.

In a decision^[5] dated 28 December 2012, the Labor Arbiter, to whom the case was assigned, agreed with the contentions of SMFI. The Labor Arbiter explained that Calip was not able to prove his employment relations with SMFI. The contract of employment of Calip only shows that he was hired by LHP for a limited period from May 2002 to May 2004 and was merely assigned at the B-Meg Plant of SMFI. Calip's payslips which are until 2007, on the other hand, appear to be also issued by LHP and not by SMFI. Finally, as to his SSS records, the same reveal that Calip's employer was private respondent Ernesto C. Ebrada and not SMFI. Further, the Labor Arbiter found that based on Calip's latest payslip, the action for illegal dismissal and the monetary claims have already prescribed.

On appeal, the National Labor Relations Commission First Division (NLRC) made a different finding as to who is the real employer of Calip. According to the NLRC, LHP is mere labor-only contractor as it failed to prove that it has enough capitalization to be considered as an independent contractor, on top of the fact that it was not registered with the Department of Labor and Employment as a legitimate contractor. As a labor-only contractor, LHP then is considered as an agent of SMFI, making the latter the true employer of Calip. Nonetheless, the NLRC did not grant the appeal of Calip on the ground of prescription. Considering that Calip was not able to produce any identification card or payslip indicating that he worked with SMFI after 2007, the NLRC concluded that Calip's employment with SMFI was terminated on 31 December 2007, the expiration of the contract of services between LHP and SMFI. When the case was filed on 24 January 2012, more than four (4) years have elapsed, hence already barred by prescription in accordance with Article 1146 of the New Civil Code and Article 291 of the Labor Code.

The *fallo* of the decision of the NLRC dated 18 June 2013 reads:

"WHEREFORE, the appeal filed by the complainant is hereby DISMISSED for lack of merit. Accordingly, the Decision dated December 28, 2012 of Labor Arbiter Isagani Laurence G. Nicolas is AFFIRMED.

SO ORDERED."^[6]

Aggrieved, Calip filed a motion for reconsideration of the above decision, but to no avail. The NLRC thus decreed as follows:

"WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit. No further motion for reconsideration of the same tenor shall be entertained.

SO ORDERED."^[7]

Undaunted, Calip now comes to this Court via this instant Petition for Certiorari and in support thereof, assigns the following errors on the part of the NLRC:

I.

WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) COMMITTED

GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN RULING THAT THE PETITIONER'S CAUSES OF ACTION FOR ILEGAL DISMISSAL AND MONEY CLAIMS ARE BARRED BY PRESCRIPTION.

II.

WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF (SIC) JURISDICTION IN NOT HOLDING THAT THE PETITIONER WAS ILLEGALLY DISMISSED, HENCE ENTITLED TO BACKWAGES AND SEPARATION PAY, PLUS HIS MONETARY CLAIMS (I.E. UNDERPAYMENT OF WAGES, MORAL AND EXEMPLARY DAMAGES, OVERTIME PAY, 13th MONTH PAY, SERVICE INCENTIVE LEAVE PAY, AND ATTORNEY'S FEES).

In essence, Calip contends that his complaint for illegal dismissal and money claims is not barred by prescription since he was dismissed from service only in October 2009 and not on 31 December 2007 as espoused by both the Labor Arbiter and the NLRC. In support of this argument, Calip first cites the memorandum issued by private respondent Ernesto Ebrada of LHP to its employees dated 31 January 2008 reminding them to stop working at the B-Meg Plant effective 1 March 2008 as the contract of services between LHP and SMFI has already expired on 30 December 2007.^[8] According to Calip, said memorandum indubitably proves that LHP (SMFI)'s employees including Calip were still allowed to work notwithstanding the expiration of the contract of services between SMFI and LHP. *Second*, Calip points to a related decision in a labor case between SMFI and the other employees of LHP dated 31 May 2011, where it was held that the contract of services between SMFI and LHP subsisted from 1997 until 31 January 2011.^[9] *Third*, Calip notes the two (2) affidavits executed by Calip's former co-workers where they mentioned that Calip continued to work at B-Meg Plant after 1 March 2008 and was only dismissed from service in 2009.^[10] *Last*, Calip mentions that his failure to produce his identification card and payslips after 2007 was because his house was totally washed away by the typhoon "Pepeng".^[11] With the above averments, Calip prays the payment of his monetary claims as well as the payment of backwages and separation pay in lieu of reinstatement.

At the outset it bears to stress that a petition for *certiorari* is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain speedy, and adequate remedy at law. There is "grave abuse of discretion " when public respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.^[12]

As often repeated by the Supreme Court; the sole purpose of the writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction. **A special civil action of *certiorari* does not include correction of the NLRC's evaluation of the evidence and factual findings thereon.**^[13]