TWELFTH DIVISION

[CA-G.R. SP No. 133164, March 03, 2015]

MARVIN S. CUNANAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND MRS. REGINA B. GO, RESPONDENTS,

DECISION

MACALINO, J:

THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court[1], seeking to annul and set aside the 30 August 2013 Decision[2] ("Assailed Decision") and the 16 October 2013 Resolution[3] denying the Motion for Reconsideration, promulgated by the National Labor Relations Commission ("Public Respondent") in NLRC NCR Case No. 01-100105-13 [NLRC LAC No. 07-001952-13]. The dispositive portion[4] of the assailed Decision reads:

> *"**WHEREFORE**, the Appeal is GRANTED and the Decision of the Labor Arbiter, dated 30 April 2013 is hereby REVERSED and SET ASIDE and a new one issued declaring the Complainant as a househelper. Nonetheless, considering that the Complainant was unjustly terminated from service, Respondent-Gina B. Go is ordered to pay the Complainant an indemnity equivalent to fifteen [15] days wage or PhP8,700.00*
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> ***SO ORDERED**."*

FACTS OF THE CASE

According to Marvin S. Cunanan ("Petitioner"), he was hired by Regina B. Go ("Private Respondent") as driver sometime in November 1997. He was issued an Identification Card ("ID") to gain ingress and egress to the residence of his employer. As Driver, he would drive the children of Private Respondent to their respective schools and thereafter, the Private Respondent to her office. Before Petitioner would fetch the children after school, he was required to drive to Alabang, Muntinlupa and Greenhills, San Juan to deliver some items to Private Respondent's store, G-Stop.[5] It was his firm belief that he was not a mere family driver but a driver for the Private Respondent's business establishment for the reason that since his employment, Petitioner was not made to sign any contract indicating his position as family driver.[6] As driver, he was paid a salary of Php580.00 a day or more or less Php15,00.00 a month. On 26 November 2012, Petitioner sent a text message to Private Respondent regarding his salary which was short of seven (7) days since he was only paid for fourteen (14) days instead of twenty-one (21) days of work. The day after, on 27 November 2012, to the surprise of Petitioner, Private Respondent dismissed him from employment by calling him up and telling him: ***"KUNG HINDI***

KA NA MASAYA DITO, UMALIS KANA AT UMALIS KANA."[7]

According to Private Respondent, Petitioner was hired as a family driver sometime in December 1997 and was paid above the minimum wage mandated by law.[8] Adhering to the policy of no work-no pay, Private Respondent still pays Petitioner his daily wages on Maundy Thursday, Good Friday, Christmas eve, Christmas day, 30 and 31 December and New Year's Day. Out of generosity, she also makes sure that Petitioner receives a Christmas bonus. Moreover, since 2001, even before the compulsory coverage under the SSS Law was made mandatory, Private Respondent had been consistently contributing Petitioner's share to the Social Security System and the Philippine Health Insurance Corporation until Petitioner was dismissed from employment.[9] As her stay-in driver, Private Respondent provides free board and lodging as well as a meal allowance of Php100.00 to Petitioner whenever he would be out driving at mealtimes. In addition, she would also shoulder Php250.00 of the Php350.00 postpaid plan per month of the Petitioner that he uses even for his personal calls.[10] Despite such benefits, on 26 November 2011, a series of exchanges of text messages wherein Petitioner was asking for his thirteenth (13th) month pay led to the severance of Petitioner's employment with the Private Respondent the day after.[11]

In view thereof, Petitioner instituted a Complaint with the Labor-Arbiter on 04 January 2013[12] and was set for preliminary hearing on 28 January 2012 and 04 February 2013.[13] The parties failed to arrive at an amicable settlement and were required to submit their respective position papers and supporting documentary evidence instead.[14] On 15 February 2013, the Labor-Arbiter received the Petitioner's Position Paper.[15] The Private Respondent's Position paper was also received on the same date.[16] The Private Respondent filed her Reply Position Paper on 27 February 2013, insisting that Petitioner is a househelper, as the latter attends to the personal comfort and enjoyment of her family.[17] Petitioner's trips to Private Respondent's business establishment was only for the purpose of running errands and to fetch her from her place of work. On the same date, Petitioner filed his Reply, claiming that attending to Private Respondent's family was just an additional task for him as driver of G-Stop.[18]

On 30 April 2013, Labor-Arbiter Joel S. Lustria rendered a Decision[19] declaring Petitioner as a regular employee of G-stop and his being a driver to Private Respondent's family is only an additional task. For having been illegally dismissed, Private Respondent was ordered to pay Petitioner backwages, separation pay, his thirteenth month pay and attorney's fees.

Aggrieved with the Decision of the Labor-Arbiter, Private Respondent elevated the case to the National Labor Relations Commission, Public Respondent, via a Notice of Appeal[20] with Memorandum of Appeal[21] dated 27 June 2013, assigning the following errors, to wit: (1) the Labor-Arbiter gravely erred in finding that Petitioner is a regular employee of appellant and not a member of her household as a family driver as he was issued an ID to enter the village everyday pursuant to the village rules that require all household/domestic helpers to have an ID for records and security reasons.[22] Moreover, Petitioner cannot assert that he was a driver of G-Stop for fifteen (15) years as G-Stop commenced operations only in late 2011[23];

(2) the Labor-Arbiter gravely erred in totally disregarding the vital pieces of evidence, i.e., SSS Contribution Collection List, Identification Card issued by the Private Respondent's village, and Petitioner's own declaration under oath in his Complaint and Amended Complaint which indicated "PRIVATE HOUSEHOLD" under "Industry Classification"[24]; (3) the Labor-Arbiter gravely erred in finding that Petitioner was illegally dismissed by Private Respondent as the latter had lost trust and confidence with Petitioner. As househelper, Private Respondent need not comply with the two-notice rule since such procedural requirements are only applicable to regular employees[25]; and lastly, (4) the Labor-Arbiter gravely erred in awarding Petitioner backwages, separation pay, thirteenth month pay, and attorney's fees. Pursuant to the Thirteenth Month Law, family drivers are not covered. Even if Private Respondent is not obligated to give Petitioner the benefit of a thirteenth month pay, the former had been giving him a Christmas bonus equivalent to such benefit.[26]

Praying that the appeal of the Private Respondents be denied for utter lack of merit, Petitioner filed his Comment on 15 July 2014.[27]

RULING OF THE NLRC

On 30 August 2013, the National Labor Relations Commission, the Public Respondent, rendered a Decision[28] reversing and setting aside the Decision of the Labor-Arbiter, declaring the Petitioner as a househelper. Nonetheless, considering that Petitioner was unjustly terminated from service, Private Respondent was ordered to pay Petitioner an indemnity to fifteen (15) days wage or Php8,700.00.

In reversing the decision of the Labor Arbiter, the Public Respondent ruled in this wise:

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> *"The Labor Arbiter, in the assailed Decision, concluded that the Complainant was a regular employee of the Respondent's business since 1997 until his dismissal on 27 November 2012. However, we must agree with the Respondent that this conclusion has no basis in fact and in law. As established by the evidence on record, Dameka Trading, which owned G-Stop, was merely incorporated on 10 May 2011. Subsequently. G-Stop was only issued business permit on 16 November 2011 to operate in Alabang Town Center in Muntinlupa and the one in Greenhills, San Juan on 07 February 2012. Verily, the Complainant could not possibly work for G-Stop in its branches from the time of his employment in December 1997 considering that this business was merely incorporated in 2011 and its branches were only issued permits to operate in November 2011 and February 2012, respectively. There is neither showing that the Complainant was elevated to company driver at the start of the Respondent's business in 2011.*
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> *We are not unmindful of the ruling that any competent and relevant evidence to prove employment relationship may be admitted, such as identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization*

charts, and personnel lists, which are readily available, as they are in the possession of either the employee or the employer. However, in this case, aside from the Complainant'[s allegation that he was the company driver of G-Stop, he has not presented any of the relevant evidence that could have proved his allegation.

The fact there was no Contract of Domestic Service between the Respondent and the Complainant, as mandated by Article 142 of the Labor Code, did not automatically convert the household employment of the Complainant into a regular employment. Neither can we conclude that the higher daily wage received by the Complainant compared to the daily wage of domestic helpers imposed by Article 143 of the Labor Code, made the Complainant a regular employee of the Respondent's business. Certainly, the character of the employment is neither determined by the presence or absence of a contract or stipulations in the contract nor by the rate of the wage, but by the nature of the work performed.

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On the second issue, we however hold that the Complainant was unjustly terminated. The Respondent terminated the services of the Complainant due to loss of trust and confidence. This was predicated on the exchanges of text messages between the Respondent and the Complainant whereby the latter admitted that the former may have lost her trust in him. However, loss of confidence as a just cause for termination of employment must be related to the performance of the duties of the dismissed employee and must show that he or she is unfit to continue working for the employer for violation of the trust reposed in the employee. In this case, however, the record is bereft of any showing that the Complainant committed any unlawful acts while in the performance of his duty as a family driver, which could have transgressed the trust reposed in him by the Respondent. Consequently, we are not convinced that the Complainant was unfit to continue working simply because he suspected that the Respondent already lost her trust in him. Further more, the Respondent failed to notify the Complainant five [5] days before the intended termination of services as required by Article 150 of the Labor Code. What is apparent from the record is that the day after the Complainant and the Respondent had exchange of text messages, or on 27 November 2012, the Respondent already terminated the Complainant. Successively, on 28 November 2012, the Respondent requested the village security not to allow the Complainant entry without her prior knowledge or consent."

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THE ISSUES

In praying that the Decision and Resolution of the Public Respondent be overturned, Petitioner raises the following issues before this Court:

"I. PUBLIC RESPONDENT COMMISSION (SIXTH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK

OR EXCESS OF JURISDICTION IN REVERSING THE DECISION OF THE LABOR ARBITER THAT COMPLAINANT (PETITIONER) (SIC.) AND HOLDING AND DECLARING THA[T] COMPLAINANT-PETITIONER WAS NOT A REGULAR EMPLOYEE OF RESPONDENT REGINA B. GO/G-STOP STORE SUCH FINDINGS SUCH FINDINGS AND CONCLUSION BEING CONTRARY TO FACTS OF THE CASE, LAW AND EXISTING JURISPRUDENCE.

II. PUBLIC RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT ALTHOUGH COMPLAINANT WAS UNJUSTLY DISMISSED HE IS NOT ENTITLED TO SEPARATION PAY AND BACKWAGES, 13TH MONTH PAY DECLARING ERRONEOUSLY THAT HE WAS NOT A REGULAR EMPLOYEE."

THE RULING OF THIS COURT

We resolve to deny the petition.

As the dismissal and the filing of the instant Complaint occurred before Republic Act No. 10361 or the "Domestic Workers Act" became effective, the applicable law is Presidential Decree No. 442 ("Labor Code of the Philippines"), specifically, the provisions on the employment of househelpers.

Article 141 of the aforementioned law defines the services rendered by househelpers, *viz.*:

> *"ARTICLE 141. Coverage. — This Chapter shall apply to all persons rendering services in households for compensation.*
>
> *"Domestic or household service" shall mean services in the employer's home which is* ***usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer's household, including services of family drivers.****" (Emphasis Ours)*

In addition, the landmark case of Apex Mining Company, Inc. v. NLRC, et al.[29] had the opportunity to define the persons considered as household helpers as well as the criteria to be considered as such:

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> *"The foregoing definition clearly contemplates such household helper or domestic servant who is* ***employed in the employer's home to minister exclusively to the personal comfort and enjoyment of the employer's family. Such definition covers family drivers, domestic servants, laundry women, yayas, gardeners, houseboys and other similar household helps.***
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> *The definition cannot be interpreted to include household help or laundry women working in staffhouses of a company, like petitioner who attends to the needs of the company's guest and other persons availing of said*