SPECIAL SEVENTH DIVISION

[CA-G.R. SP NO. 130631, August 08, 2014]

JONATHAN D. QUITLONG, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, JTA PACKAGING AND/OR JUN TAN, RESPONDENTS.

DECISION

REYES, JR., J.C., J.:

This petition for *certiorari* under Rule 65 of the Rules of Court was filed by Jonathan D. Quitlong to assail the Resolutions dated April 15, 2013 and January 30, 2013 of the National Labor Relations Commission in NLRC NCR CASE No. 05-07856-11 (NLRC LAC No. 02-000695-12).

BACKGROUND

Petitioner Jonathan D. Quitlong (Quitlong) was a former printing operator of the private respondent JTA Packaging (JTA). JTA is a domestic corporation engaged in the manufacture of plastic packaging products, with Jun Tan as its alleged responsible officer.

The facts as culled from the records are as follows:

On May 18, 2011, Quitlong filed a complaint against JTA for constructive dismissal and non-payment of service incentive leave pay and separation pay. He alleged that he started working at JTA on May 19, 1966; JTA however, claimed that it hired Quitlong only in July 2009. Quitlong worked at JTA until January 22, 2011 after he was diagnosed to be suffering from possible "Hansen's Disease, Lepromatous Stage", an infectious disease. Quitlong's sickness was confirmed by Dr. Arlyn Lim of the Jose Reyes Memorial Medical Center who issued a medical certificate on March 30, 2011 stating that Quitlong was diagnosed with Hansen's Disease, Lepromatous Stage, and that he was required to take medication for approximately one year.

Quitlong further claimed that the letter of application that he allegedly signed on June 18, 2009 was fake since his signature was forged; that his co-employee Domingo Lansaderas attested that Quitlong was hired in 1996 as *pahinante*; that despite being declared "fit to work" on April 25, 2011 by Dr. Arlyn Lim because his sickness was no longer contagious, JTA still refused to allow him to report for work; that he was deemed illegally dismissed for which he must be paid separation pay with full backwages since reinstatement was no longer viable; that while he obtained cash advances of P22,000.00 from JTA, they were already deducted from his previous salaries; that he should be paid his service incentive leave pay.

JTA countered that it had no connection with Jun Tan, the other respondent; that Quitlong was hired in July 2009 as shown by Quitlong's June 18, 2009 letter

application and 13th month payroll for 2009; that Quitlong was never terminated but was on voluntary sick leave after being diagnosed with a contagious disease; that JTA could not be compelled to allow Quitlong to report back for work unless he was certified fit to work and would not pose a danger to the health of his co-employees; and that even if he were entitled to separation pay and service incentive leave pay, the same were not sufficient to cover his cash advances of P34,301.00.

The Labor Arbiter dismissed Quitlong's complaint for lack of merit.[1] He held that Quitlong was not illegally dismissed from employment and that JTA was justified in not allowing him to work until the lapse of the one year treatment of his disease. The Labor Arbiter awarded Quitlong his separation pay and service incentive leave pay for two (2) years but these were not sufficient to cover his P34,301.00 cash advances.

Quitlong appealed to the NLRC. In its Decision dated August 16, 2012,[2] the NLRC found that he was hired on May 19, 1996 and not in 2009. As a result, the NLRC ordered that he be paid separation pay equivalent to ½ month per year of service from May 19, 1996 up to January 22, 2011. The NLRC also ordered that he be paid his service incentive leave pay for 2008, 2009 and 2010. The P34,301.00 cash advances shall however be deducted from these monetary awards.

JTA filed a motion for reconsideration from this Decision on the ground that Quitlong started his employment with JTA only on July 1, 2009 not in 1996. JTA submitted several documents to support this claim, namely, the Social Security System Employment Report showing that for employee "QUITLONG JONATHAN DEMIAO", the date of employment was "07-01-2009"; the PhilHealth Report of Employee-Members where the entry in Quitlong's "Date of Employment" was "July 1/09"; the SSS Contribution Collection Lists, Philhealth Employers' Quarterly Remittance Reports, and Pag-Ibig Membership Registration/Remittance Forms, all for the period 2000 until June 2009 where Quitlong's name did not appear.

In its first assailed Resolution[3] dated January 30, 3013, the NLRC granted JTA's motion for reconsideration and modified its previous decision to the extent that the computation of the awards of separation pay and service incentive pay was to be reckoned from July 1, 2009.

Quitlong moved for the reconsideration of this resolution arguing that for purposes of computing his monetary award, he should be deemed to have started his employment on May 19, 1996. This time, the NLRC denied Quitlong's motion for reconsideration and stated in its second assailed Resolution[4] dated April 15, 2013 that:

> "We are not convinced.
>
> We shall again evaluate the evidence proffered by the complainant one by one.
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> First, the Affidavit executed by Lansaderas attesting that complainant was his co-employee under the same employer cannot prove that complainant worked with respondent JTA Packaging before July 1, 2009. Lansaderas alleged in his "Waiver and Quitclaim" dated May 20, 1998

that he was an employee of JTA Manufacturing. JTA Manufacturing is not JTA Packaging.

Second, pictures taken while complainant was allegedly working in respondents' premises cannot also prove that complainant worked with respondents prior to July 1, 2009. There is nothing in the pictures which would show that the picture was taken within the working premises of respondents.

Third, the payslips purportedly issued by respondents on August 16, 2008 did not in any way prove employment relationship. Nothing in the alleged payslips would show that the same were issued by respondents.

Fourth, nowhere in the records could We locate the alleged certification issued by the alleged company doctor Robert Ngo certifying that complainant was examined by him on July 19, 2008 being the physician in charge of the medical needs of the respondents/ employees.

In sum, complainant failed to controvert by clear and convincing evidence the submission of the respondents that he was only hired on July 1, 2009 which was supported by: 1) complainant's application with respondents dated January 18, 2009; 2) respondent JTA Packaging's Certificate of Registration issued by the SEC showing that it was only incorporated on January 24, 2000; and 3) SSS and Philhealth records showing complainant was only hired by respondents in 2009. While it is possible that complainant might have worked with respondents even before he was reported/registered with the SSS and Philhealth in 2009, complainant failed to present evidence which would convince Us so.

Thus, We stand firm in holding that complainant was only hired on July 1, 2009. The separation pay and service incentive leave pay awarded to complainant were therefore correctly reckoned from July 1, 2009.

WHEREFORE, premises considered, the Motion for Reconsideration of complainant is hereby DENIED for lack of merit.

SO ORDERED."

Hence, Quitlong filed this petition for *certiorari*.

THE ISSUE

"WHETHER PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THE COMPUTATION OF PETITIONER'S SEPARATION PAY AND SERVICE INCENTIVE LEAVE SHOULD BE RECKONED FROM JULY 1, 2009."

THE COURT'S RULING

Quiltong submits that the *mere absence of employee records with the SSS is not conclusive proof of the question of employment*. He asserts that *it is not entirely impossible that private respondent failed to report petitioner's employment with the*