

SIXTH DIVISION

[CA-G.R. SP NO. 129552, November 24, 2014]

**ZIPPY INTERNATIONAL RESOURCES, INC., PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION)
AND LEA B. DE OCAMPO, RESPONDENTS.**

DECISION

TIJAM, J.:

This is a Petition for Certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction seeking to annul and set aside the Resolution^[1] dated January 31, 2013 of the National Labor Relations Commission (NLRC) declaring private respondent Lea A. De Ocampo (*Lea*) as illegally dismissed from employment and increasing her claim for salary to 55,000 UAE Dirham, from 15,000 UAE Dirham as stated in its Decision^[2] dated November 29, 2012.

The facts of the case are as follows:

Lea was hired as a Sales Staff by Liwa Trading Enterprises-LLC (*Liwa, for brevity*), through its local agent, Zippy International Resources, Inc. (*Zippy, for short*), for a duration of two (2) years and with a monthly salary of 2,500 UAE Dirham.^[3]

Prior to Lea's deployment, she underwent a pre-employment medical examination and the remarks was "CXR – Suspect Residual Pulmonary Fibrosis (R) Upper Lobe". The physician placed "Pending" in her recommendation.^[4] Lea also went through another medical examination with Dr. Aileen S. David-Wang of Manila Doctors Hospital.^[5]

On June 12, 2009, Lea was deployed for United Arab Emirates (UAE). Upon her arrival in Abu Dhabi, UAE, Liwa subjected her to a medical examination where she was found to be suffering from the same illness, Pulmonary Tuberculosis.^[6]

On August 20, 2009, Lea was repatriated to the Philippines pursuant to paragraph 14(c)^[7] of her employment contract. Liwa shouldered all the expenses for her repatriation.

On June 17, 2011, Lea filed a Complaint for illegal dismissal and payment of salary for the unexpired portion of her contract against Zippy, Liwas and Anthony Meneses^[8] before the Arbitration Branch of the NLRC.

Lea alleged that except for the medical results that she had a scar in her lungs, thus not fit to work, she met all the requirements for her deployment. Despite her medical condition, she was enticed into leaving the country because of the

misrepresentation of the respondents that other Overseas Filipino Workers (OFWs) who had been deployed with failed medical condition were able to finish their contract and were even redeployed. However, she was completely astounded when she was again made to undergo medical examination in UAE by Liwa, and when the result was the same, she was advised to be repatriated immediately after processing all her documents.^[9]

Lea contended that she was illegally terminated from work when she was repatriated before the expiration of her two-year contract of employment or one (1) month after her deployment. Lea asserted that respondents misrepresented that she could work abroad despite her medical condition, as they only considered the amount that they will gain from her deployment abroad. She claimed that respondents are solidarily liable for her salaries for the unexpired portion of her contract and for the reimbursement of her placement fee with interest of 12% per annum. She further claimed entitlement to damages due to the utter disregard of her contract when she was summarily dismissed from employment, an act that constitutes oppression to labor. Her emotional distress sprung from the wrongful acts of the respondents when they misrepresented to her that she could work abroad despite her medical condition. She also asked for attorney's fees although she was represented by the Public Attorney's Office (PAO) claiming that since it is allowed under R.A. No. 9406, or the New PAO Law.^[10]

In the position paper, Petitioner Zippy, together with Liwas and Anthony Meneses, contended that after Lea was declared unfit for work due to pulmonary tuberculosis and rejected to be deployed abroad, she subjected herself to another medical examination by Dr. Wang. Lea went back and pleaded for employment abroad insisting that she is "cleared for employment" as indicated in the medical certificate issued by Dr. Wang. After explaining to Lea the provisions of paragraph 14(c)^[11] of her employment contract, her plea was granted and she was deployed, but was repatriated back due to medical reason. They were surprised to receive a copy of the summons and the complaint that had been filed by Lea against them before the Arbitration Branch of the NLRC.^[12]

Petitioner Zippy, Liwas and Mr. Meneses contended that Lea's dismissal was due to illness, pulmonary tuberculosis, which is a ground for termination of the employment contract, hence, she is not entitled to salaries for the unexpired portion of her contract. They argued that the filing of the complaint for illegal dismissal on June 17, 2011 was a mere afterthought considering that Lea arrived in the Philippines as early as August 20, 2009. They claimed that the complaint was baseless and clearly unfounded and has besmirched the company's good name and goodwill that they had built and earned through the years of painstaking efforts. In bringing her unfounded suit, Lea acted in a wanton, malevolent and oppressive manner that would entitle them to payment of moral and exemplary damages. They claimed payment of attorney's fees as they were constrained to retain the services of counsel for a fee and incurred expenses of litigation.^[13]

On January 19, 2012, the Labor Arbiter ruled that the complaint has not yet prescribed since it was filed within the prescriptive period of four (4) years and that Lea's termination from employment was illegal. The Labor Arbiter explained that the absence of a certification from a competent public health authority that the illness of Lea is not curable within a period of six months rendered her dismissal illegal. He

expounded that a medical certificate issued by the company's physician is not an acceptable certificate for purposes of termination of employment. On this score, the Labor Arbiter awarded to Lea the salaries for the unexpired portion of her contract in the amount of P55,000.00 (2,500 UAE Dirham x 22 months). The dispositive portion of the Decision states:

"WHEREFORE, premises considered, judgment is hereby rendered finding complainant to have been ILLEGALLY DISMISSED. Respondents are held jointly and solidarily liable to pay complainant's salary the unexpired portion of her contract to wit:

2,500 UAE DIRHAM X 22 MONTHS = P55,000.00

UAE DIRHAM at its peso equivalent at the time of payment.

SO ORDERED. "[14]

Not satisfied with the above ruling, Petitioner Zippy, Liwas and Mr. Meneses brought the case on appeal to the NLRC, and contended that the admission of Lea that she was afflicted with pulmonary tuberculosis is a substantial proof that she was validly dismissed from employment pursuant to paragraph 14(c) of the contract of employment. The case of *ATCI Overseas Corp. vs. Court of Appeals*^[15] is not applicable since the OFWs involved in that case never admitted that they were suffering from any sickness and they worked for several months before their dismissal from employment. They further contended that the award of salaries equivalent to 22 months, assuming that Lea was illegally dismissed, was erroneous.

In its assailed Decision dated November 29, 2012, the NLRC sustained the Labor Arbiter's finding that Lea was illegally dismissed from employment. The NLRC however reduced the amount of salaries awarded by the Labor Arbiter from 55,000.00 to 15,000.00 UAE Dirham pursuant to R.A. No. 10022,^[16] amending R.A. No. 8049. The dispositive of the Decision states:

"WHEREFORE, premises considered, the appeal is partly granted. The salary awarded to complainant is reduced to 15,000.00 UAE Dirhams or its peso equivalent at the time of payment. All disquisitions not affected by the modification stays.

SO ORDERED. [17]

Lea filed a motion for partial reconsideration contending that she is entitled to 55,000 UAE Dirham and not to 15,000 UAE Dirham.

On January 31, 2013, the NLRC issued its assailed Resolution^[18] modifying the monetary award, increasing the same from 15,000 UAE Dirham to 50,000 UAE

Dirham, in this wise:

"WHEREFORE, premises considered, the motion for reconsideration is *GRANTED*. Our 29 November 2012 Decision is modified in that the award be increased to *55,000 UAE Dirhams* or its peso equivalent at the time of payment. All disquisitions not affected by this modification stand.

No further motion of similar nature shall be entertained.

SO ORDERED."^[19]

Hence, this recourse filed by petitioner Zippy ascribing grave abuse of discretion to the NLRC, to wit:

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT FOUND THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED AND IS ENTITLED TO HER MONETARY CLAIMS.

Petitioner points out that private respondent's admission that she was afflicted with pulmonary tuberculosis was more than a substantial proof that she was validly dismissed from employment as it was in accordance with paragraph 14(c) of the employment contract. Petitioner argued that it is not guilty of any misrepresentation since it warned private respondent that she may be repatriated back home if health authorities in UAE found out that she is not fit to work. It further argued that it previously deployed an OFW with lung cancer and the OFW was able to complete the contract since the foreign health authorities cleared the OFW to work. Assuming without admitting that Lea was illegally dismissed, she is entitled only to 15,000 UAE Dirham and not 5,000 UAE Dirham pursuant to R.A. No. 10022, amending R.A. No. 8042.

The issue for resolution is whether Lea was illegally dismissed from employment, if so, whether she is entitled to salaries for the unexpired portion of her employment contract in the total amount of 5,000 UAE Dirham.

The petition is bereft of merit.

Before We delve on the merits of the present controversy, We note that the Verification and Certification Of Non-Forum Shopping attached to the petition for certiorari was signed by Lea P. Arujado and she stated that she is the Vice-President and duly authorized representative of petitioner Zippy. However, there is no evidence to show that Lea P. Arujado had been duly authorized to sign the certification for and in behalf of petitioner Zippy. Hence, the petition is deemed not filed.

In *Philippine Airlines, Inc vs. Flight Attendants and Stewards Association of the Philippines (FASAP), et al.*,^[20] it was held that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf

of a corporation. Proof of such authority is required to be attached. The petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority.

Certiorari is an extraordinary, prerogative remedy and is never issued as a matter of right. Accordingly, the party who seeks to avail of it must strictly observe the rule laid down by law.^[21] Section 1, Rule 65 of the 1997 Rules of Civil Procedure in relation to Section 3, paragraph 3, Rule 46 of the same Rules, state:

Section 1. *Petition for certiorari.* – When any tribunal, board or officer exercising quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Section 3, Rule 46. *Contents and filing of petition; effect of non-compliance with requirements.* – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

xxx xxx xxx

The petitioner shall also submit with the petition a sworn certification that he has not heretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

xxx xxx xxx