Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARIA LUZ AVILA BOGNOT,
Petitioner,

- versus -

PINIC INTERNATIONAL (TRADING) CORPORATION/CD-R KING, NICHOLSON SANTOS, and HENRY T. NGO,
Respondents.

G.R. No. 212471

Present:

CARPIO, *J.*, *Chairperson,*
PERLAS-BERNABE,
CAGUIOA,
REYES, J. JR., and
LAZARO-JAVIER, *JJ.*

Promulgated:

11 MAR 2019

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DECISION

REYES, J. JR., *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated December 5, 2013 of the Court of Appeals (CA) in CA-G.R. SP. No. 120719. The CA's Resolution[3] dated May 5, 2014, denying petitioner's motion for reconsideration is likewise impugned herein.

This petition is rooted from a complaint for illegal dismissal, and other monetary claims filed by Maria Luz Avila Bognot (petitioner) against Pinic International Trading Corporation/CD-R King, Nicholson C. Santos, and Henry Ngo (respondents).

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1 *Rollo*, pp. 9-39.
2 Penned by Associate Justice Michael P. Elbinias, with Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela, concurring; id. at 40-53.
3 Id. at 55-56.

Petitioner alleges that respondents employed her as a branch head in 2003. She was assigned to different CD-R King branches, the last of which was at Robinson's Place Manila. As branch head, she was responsible for the inventory, adjustment and monitoring of stocks; deposit of daily sales to the bank; and supervision of store operations.[4]

Petitioner narrates that sometime in April, she was accused of allowing unauthorized persons to enter CD-R King's bodega at Robinson's Place, for which she was suspended for three days.[5]

On May 7, 2010, petitioner was allegedly informed that she will be pulled out of the branch for no given reason and was told not to report for work anymore. According to petitioner, she was also threatened to be brought to the police on false charges of theft.[6]

On May 9, 2010, petitioner was pulled out from the branch. Few days thereafter, or on May 13, 2010, petitioner filed the illegal dismissal complaint against respondents.[7]

For their part, respondents aver that sometime in 2004, the company entered into a service contract agreeement with People's Arm Manpower Services, Inc. (PAMS). Pursuant to the said contract, PAMS assigned petitioner to respondents' company to perform sales and marketing services. Petitioner's salary and other benefits such as Social Security Service (SSS) were given by PAMS. It was also PAMS which deals with disciplinary measures and controls petitioner's work matters. Hence, contrary to petitioner's claim, respondents did not have the power to dismiss her from employment.[8] For this reason, PAMS was impleaded as a co-respondent upon respondents' motion.[9] Notably, PAMS presented the same allegations and arguments as those of respondents.[10]

Respondents allege that sometime in the early part of 2010, they notified PAMS of some issues that they encountered due to petitioner's actions and/or inactions. Acting upon said complaints from respondents, PAMS Human Resource Manager and Marketing Officer issued memoranda, requiring petitioner to submit a written explanation on the report that she allowed strangers to enter the restricted area of the store premises and that she failed to organize and display store merchandise.[11]

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4 Id. at 225-226.
5 Id. at 226.
6 Id.
7 Id. at 238.
8 Id. at 227-229.
9 Id. at 225.
10 Id. at 232.
11 Id. at 229-230.

On April 29, 2010, it was discovered that petitioner's negligence led to a huge discrepancy in CD-R King's inventory. This prompted respondents to submit an incident report to PAMS. Thus, PAMS issued another memorandum to petitioner, requiring her to explain the reported complaint. Petitioner submitted her handwritten response. PAMS was, however, not satisfied with petitioner's explanation. Thus, considering the contractual liabilities to respondents that PAMS may incur due to petitioner's infractions, PAMS decided to recall petitioner's assignment with respondents.[12]

In a Memorandum dated May 7, 2010, PAMS wrote:

> We regret to inform you that we have to pull-out your contract of services with our Client, CD-R King, due to negligence of duty resulting to huge discrepancy.
>
> In this regard, we have to pull-out you [sic] on this day of May 09, 2010. Kindly make a proper turn-over of your duties and responsibilities to your head.
>
> Thank you for being part of CDR king [sic], **and be ready for the next company assignment we will give you.**[13] (Emphasis supplied)

Respondents, thus, maintain that petitioner was never dismissed from work but was merely pulled out from their company to be re-assigned by PAMS to another client.[14]

In its November 30, 2010 Decision,[15] the Labor Arbiter (LA) dismissed the complaint, finding that, in the first place, there was no employer-employee relationship between petitioner and respondents. Instead, records show that it was PAMS which engaged petitioner's services, paid her salary and benefits, and had the power to discipline and control her conduct in accordance with its undertaking in the service contract agreement. Petitioner's dismissal, if at all, cannot be imputed against respondents according to the LA.

Proceeding to the issue of illegal dismissal, the LA found the records to support respondents' contention that petitioner was never dismissed. Petitioner was merely pulled out from respondents to be re-assigned to another PAMS client. Petitioner, however, filed the illegal dismissal case only four days after her pull out for re-assignment, which makes the institution of the complaint premature.[16]

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12 Id. at 230-231.
13 Id. at 231.
14 Id. at 232.
15 Id. at 224-241.
16 Id. at 238.

Anent petitioner's monetary claims, the LA found evidence showing that during petitioner's assignment with respondents, PAMS deducted certain amounts from her salary as a form of cash bond. Evidence were also found proving that petitioner was not paid her salary for certain days. Hence, the LA granted said claims and made respondent Pinic International Corporation/CD-R King solidarily liable with PAMS for the payment thereof, citing Section 7[17] of the Rules Implementing Articles 106 to 109 of the Labor Code.[18]

The LA disposed, thus:

> **WHEREFORE**, premises considered, the instant complaint for illegal dismissal is hereby dismissed for lack of merit. However, respondents CD-R King/Pinic International Corporation and People's Arm Manpower Services, Inc. are hereby ordered to jointly and severally pay [petitioner] the following amounts:
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> a. Five Thousand Forty Pesos (P5,040.00), as and by way of unpaid salary;
>
> b. Thirteen Thousand Nine Hundred Pesos (₱13,900.00), as and by way of refund of the cash bond deducted by PAMS.
>
> All other claims are hereby dismissed for lack of merit.
>
> **SO ORDERED**.[19]

On appeal, the National Labor Relations Commission (NLRC), in its Decision[20] dated May 16, 2011, affirmed the LA's ruling in its entirety. After re-evaluating the arguments and evidence presented by both parties, the NLRC found that indeed, petitioner was under the employ of PAMS, not of the respondents, and more importantly, there was no dismissal from employment to speak of at the time of the institution of the complaint for illegal dismissal. The NLRC also upheld the grant of the refund of cash bond and unpaid salaries in favor of petitioner. It disposed, thus:

> **WHEREFORE**, the assailed Decision is hereby **AFFIRMED**.
>
> **SO ORDERED**.[21]

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17 SEC. 7. *Existence of an employer-employee relationship.* – The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages. x x x

18 *Rollo*, p. 240.

19 Id. at 241.

20 Id. at 285-313.

21 Id. at 312.

In its assailed December 5, 2013 Decision, the CA sustained the findings and conclusion of the NLRC altogether, thus:

> **IN VIEW OF ALL THESE**, the Petition is **DENIED.**
>
> **SO ORDERED.**[22]

In its May 5, 2014 assailed Resolution, the CA denied petitioner's motion for reconsideration:

> **IN VIEW OF ALL THESE,** the Motion for Reconsideration is **DENIED.**
>
> **SO ORDERED.**[23]

Hence, this petition.

The core issue in this case is whether petitioner was illegally dismissed from employment. This petition, however, focuses on the argument that PAMS is a mere labor-only contractor, having no substantial capital or investment and direct supervision over her. As such, petitioner argues that the employer-employee relationship between her and respondents remained until her alleged illegal dismissal in April 2010. It is the petitioner's theory that the May 7, 2010 pull out memorandum was merely a ploy to sever her employment with respondents. In fine, petitioner maintains that her employment with respondents was illegally terminated.

We resolve.

The issues of whether or not an employer-employee relationship existed between petitioner and respondents, and whether or not PAMS have substantial capital or investment and direct supervision of petitioner to be considered a legitimate independent contractor, are essentially questions of fact.[24] Basic is the rule that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Court's jurisdiction is generally limited to reviewing errors of law. The Court is not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality,[25] especially so when the labor arbiter and the NLRC have uniform findings, which were affirmed by the appellate court. Thus, this Court will not review such findings of the appellate court and

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22 Id. at 52.

23 Id. at 56.

24 *See Valencia v. Classique Vinyl Products Corporation,* G.R. No. 206390, January 30, 2017, 816 SCRA 144, 159.

25 *Doctor v. NII Enterprises*, G.R. No. 194001, November 22, 2017, 846 SCRA 53, 65-66..

tribunals unless the recognized exceptions[26] to such rule are present, which we do not find in this case.

Verily, this Court finds no reason to deviate from the uniform findings of the LA, the NLRC, and the CA that an employer-employee relationship existed between petitioner and respondents; and that PAMS was petitioner's employer, PAMS being a legitimate independent contractor, having substantial capital and direct supervision over petitioner's work.

At any rate, what is more relevant at this point and necessary to determine at the onset is whether or not there was a dismissal to speak of in this case. Both the LA and the NLRC, as well as the CA, found none.

We agree.

The Court is not unaware of the rule that in illegal dismissal cases, the employer has the burden of proving that the termination was for a valid or authorized cause. However, there are cases wherein the facts and the evidence do not establish *prima facie* that the employee was dismissed from employment.[27] Thus, it is likewise incumbent upon the employees that they should first establish by substantial and competent evidence the fact of their dismissal from employment. Fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish by substantial evidence the fact of his or her dismissal.[28]

In this case, the established facts and evidence show that petitioner was not dismissed from employment. The records are clear that petitioner was merely pulled out from respondents' Robinson's Place Manila branch to be given another assignment. As correctly pointed out by the tribunals and court *a quo*, petitioner was pulled out from her assignment on May 9, 2010 and instructed to "be ready for the next company assignment" that PAMS will give her. However, only four days thereafter, petitioner already filed this illegal dismissal case. Clearly, at that point, there was no dismissal to speak of yet.

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[26] These exceptions are: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) [when] there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (*Pascual v. Burgos*, 776 Phil. 167, 182-183 [2016]).

[27] *Doctor v. NII Enterprises*, supra note 25, at 67.

[28] *Tri-C General Services v. Matuto,* 770 Phil. 251, 254 (2015).

Traditionally invoked by security agencies when guards are temporarily sidelined from duty while waiting to be transferred or assigned to a new post or client, the same principle in temporary displacement, "off-detailing" or putting an employee on floating status is also applied to other industries. The rule is settled that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time and that it is only when such "floating status" lasts for more than six months that the employee may be considered to have been constructively dismissed. A complaint for illegal dismissal filed prior to the lapse of the said six-month period and/or the actual dismissal of the employee is generally considered as prematurely filed.[29]

Such principle finds legal basis in Article 286[30] of the Labor Code, which allows employers to put employees on floating status for a period not exceeding six months as a consequence of a *bona fide* suspension of the operation of a business or undertaking. As found by the tribunals and court *a quo*, this Court finds no fault against PAMS in opting to suspend its undertaking with respondents by pulling out petitioner from the latter's branch so as not to incur contractual liabilities to respondents. To our mind, this is a legitimate concern, which does not, in any way, indicate any bad faith or arbitrariness on PAMS' part.

Relatively, petitioner's unsupported theory that the pull out is actually a form of constructive dismissal does not persuade this Court. The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving the management of its prerogative to change their assignments or to transfer them. It should be emphasized that absent showing of illegality, bad faith, or arbitrariness, courts often decline to interfere in employers' legitimate business decisions considering that our labor laws also discourage intrusion in employers' judgment concerning the conduct of their business.[31] As mentioned above, PAMS had a *bona fide* reason to re-assign petitioner to another client. To be sure, the premature filing of the illegal dismissal case deprived PAMS the latitude given to it by law to re-assign petitioner to another client.

This Court, therefore, sustains the uniform rulings of the LA, NLRC, and the CA that the complaint for illegal dismissal was prematurely filed and, thus, should be dismissed.

The monetary claims granted to the petitioner were likewise supported by substantial evidence and, thus, will not be disturbed by this Court.

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29 *Nippon Housing Phils. Inc. v. Leynes*, 670 Phil. 495, 507 (2011).

30 Art. 286. When employment not deemed terminated. The *bona fide* suspension of the operation of a business undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

31 *Nippon Housing Phils. Inc. v. Leynes*, *supra* note 29, at 506.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision dated December 5, 2013 and the Resolution dated May 5, 2014 of the Court of Appeals in CA-G.R. SP. No. 120719 are hereby **AFFIRMED**.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LUCAS P. BERSAMIN
Chief Justice