SUPREME COURT
SECOND DIVISION

ASSOCIATION OF TRADE UNIONS (ATU), RODOLFO MONTECLARO and EDGAR JUESAN,
***Petitioners*,**

-versus-

G.R. No.100518
January 24, 2000

HON. COMISSIONERS OSCAR N. ABELLA, MUSIB N. BUAT, LEON GONZAGA JR., ALGON ENGINEERING CONSTRUCTION CORP., ALEX GONZALES and EDITHA YAP,
Respondents.
x----------x

D E C I S I O N

QUISUMBING, *J.*:

This Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court assails the resolution of the National Labor Relations Commission promulgated on May 17, 1991, which modified the decision of the labor arbiter.

Respondent company is a domestic corporation engaged in road construction projects of the government. From 1968 to 1989, it engaged the services of the following workers to work on various projects on different dates: Rodolfo Monteclaro (mechanic), Edgar Juesan[1] (painter), Victorio Lunzaga (tanker driver), Alfredo Jalet (batteryman), Julito Macabodbod (trailer helper), Ramon Tabada (carpenter), Remsy,[2] Asensi (machinist), Armand Acero (helper mechanic), Lordito Tatad (painter helper), Rogelio Tantuan (painter), Teodoro Tabio (checker), Gemudo[3] Asejo (electrician), Roland Olivar (latheman), Valeriano Mijas[4] (driver), Jose Noval (welder), Felimon Lagbao (mechanic), Pedro Roche (head welder), and Justiniano Sollano (carpenter). Their contracts indicate the particular project they are assigned, the duration of their employment and their daily wage.

In February 1989, the above-named workers joined petitioner union as members. Accordingly, petitioner union filed a petition for certification election with the regional office of the labor department. Respondent company opposed the petition on the ground that the workers were project employees and therefore not qualified to form part of the rank and file collective bargaining unit. Not for long, the Med-Arbiter dismissed the petition for certification election. On appeal, the Secretary of Labor and Employment reversed the Med-Arbiter's decision and ordered the immediate holding of a certification election.

Meanwhile, the national president of petitioner union sent a demand letter to respondent company seeking the payment of wage differentials to some affected union members. As said demand was unheeded, petitioner union and the concerned workers filed a complaint for payment of wage differentials and other benefits before the Regional Office of the Department of Labor and Employment.

Shortly thereafter, respondent company terminated the employment of aforementioned workers owing to the completion of its projects or the expiration of workers' contracts. Respondent company explained the circumstances surrounding the separation of the workers from the service as follows:

"(1) The Contract No. 2AIPD-C-10 Second Agusan Irrigation Project of NIA wherein some of the herein complainants were assigned was already 98% completed when complaints were filed. With the near completion of the contract, services of the following complainants were no longer needed:

(a) Gerundio Asejo
(b) Victorio Lunzaga
(c) Ramon R. Tabada
(d) Alfredo E. Julet (sic)
(e) Julito C. Macabodbod

(2) In the case of Contract No. 2AIPD-C-II-second Agusan Irrigation Project of NIA, the following complainants were terminated because of the 95% completion of the phase of the project and expiration of their contract of employment:

(a) Remsy B. Asensi
(b) Rolando G. Olivar
(c) Edgar A. Juezan
(d) Rodolfo G. Monteclaro
(e) Valeriano S. Meyas (sic)
(f) Jose F. Noval
(g) Pedro M. Roche

(3) In Contract Package R11 1/209, Davao del Norte, the contracts of employment of Armand T. Acero and Felimon J. Dagbao (sic) Jr. expired.

(4) In the Widening and Improvement of Rafael Castillo St., Davao City Project, where complainant Teodoro Tabio was assigned, he was terminated because he went on absent without leave (AWOL) while Lordito Tatad's contract of employment expired."[5]

However, the affected workers claim that they were dismissed because of their union activities. In view of the alleged illegal dismissals and harassment by their employer, the workers staged a strike on May 17, 1989. Upon complaint of respondent company, Labor Arbiter Newton Sancho declared said strike illegal and decreed

further that Victorio Lunzaga, Alfred Jalet, Julito Macabodbod, Ramon Tabada and Remsy Asensi, who had participated in the strike, were deemed to have lost their employment status.

On appeal, the National Labor Relations Commission affirmed said decision. Petitioner union then elevated the matter to this Court by way of petition for *certiorari* which was eventually dismissed.[6]

Meanwhile, the aggrieved workers filed with the Regional Arbitration Branch of the NLRC their individual complaints against private respondent company for illegal dismissal, unfair labor practice, underpayment of wages, 13th month pay, holiday pay and overtime pay. They also sought reinstatement with back wages. The cases were consolidated and assigned to Labor Arbiter Nicolas Sayon for arbitration. However, noting that a similar case had been filed before the regional office of the labor department, the labor arbiter refrained from resolving the issue of underpayment of monetary benefits. He also found the charge of unfair labor practice untenable. But, on the charge of illegal dismissal, he ruled on October 31, 1989, as follows:

> "WHEREFORE in view of the foregoing, judgment is hereby rendered declaring the dismissal of the following complainants illegal; namely:
>
> 1. Victorio C. Lunzaga
> 2. Julito C. Macabodbod
> 3. Alfredo E. Jalet
> 4. Gerundio F. Asejo
> 5. Ramon R. Tabada
>
> "Respondent ALGON Engineering Construction Corporation and Alex Gonzales and Edith Yap, are hereby ordered to reinstate the above-named complainants to their former positions without loss of seniority rights plus six months backwages based on their latest salary rate at the time of their dismissal, which is P65.00 per day equivalent to monthly rate of P1,700.83, a total of P10,204.99 per complainant or in the total amount of P51,024.95.

> "The case of illegal dismissal filed by Armand Acero, Lordito Tatad, Teodoro Tabio, Ramon Olivar, Valeriano Miyas, Jose Noval, Felimon Lagbao, Pedro Roche, Remsy Asensi, Rodolfo Monteclaro, Edgar Juesan and Justiniano Sollano are hereby ordered dismissed for lack of merit.
>
> "SO ORDERED."[7]

Petitioners and private respondents separately appealed the Labor Arbiter's ruling to the National Labor Relations Commission. Pending appeal, Edgar Juesan, Lordito Tatad and Ramon Tabada filed their respective duly sworn affidavits of desistance and motions to withdraw their complaints and money claims against private respondents. Said motions were seasonably granted.

On May 17, 1991, the NLRC promulgated its resolution modifying the decision of Labor Arbiter Nicolas Sayon. It held that the labor arbiter erred in not resolving the issue of underpayment of wages because not all of the original complainants filed the same money claims with the labor department.[8] Thus, it awarded monetary benefits to qualified workers. The NLRC disposed of the case as follows:

> "Accordingly, the appealed decision is hereby modified as follows:
>
> > "1. Respondent ALGON Engineering Construction Corporation is hereby ordered to pay the complainants hereinafter enumerated, the following sums:
> >
> > WAGE DIFFERENTIALS:
> > 1. VALERIANO MIJAS
> >
> > December 14, 1987 to April 15, 1989
> > 419 days x P64.00/day ..... = P26,816.00
> > *Less:*
> > December 14, 1987 to April 15, 1989
> > 419 days x P61.00/day ..... = P25,559.00
> > TOTAL..... = P 1,257.00
> >
> > SERVICE INCENTIVE LEAVE PAY:

1) RAMSI ASENSI

5 days x P64.00 ..... = P320.00

2) VICTORIO LUNZAGA

10 days x P64.00 ..... = 640.00
5 days x 53.00 ..... = 265.00
Total P905.00

3) JULIETO MACABODBOD

10 days x P64.00 ..... = P640.00
5 days x 53.00 ..... = 265.00
Total P905.00

4) GERONIMO ASEJO

10 days x P64.00 ..... = P640.00
5 days x 53.00 ..... = 265.00
Total P905.00

5) ALFREDO JALET

10 days x P64.00 ..... = 640.00
5 days x 53.00 ..... = 265.00
Total P905.00

6) VALERIANO MIJAS

10 days x P64.00 ..... = 640.00
5 days x 53.00 ..... = 265.00
Total P905.00

7) PEDRO ROCHE

5 days x P64.00 ..... = 320.00

8) RODOLFO MONTECLARO

5 days x P64.00 .....= 320.00

13th MONTH PAY:

1) RAMSI ASENSI

26 days x P64.00 x 10 mos.
= P16,640.00 x 1/12
= P1,386.67

2) VICTORIO LUNZAGA

26 days x P64.00 x 12 mos.
= P19,968.00 x 1/12
= P1,664.00

3) JULIETO MACABODBOD

26 days x P64.00 x 12 mos.
= P19,968.00 x 1/12
= P1,664.00

4) GERONIMO ASEJO

26 days x P64.00 x 12 mos.
= P19,968.00 x 1/12
= P1,664.00

5) ALFREDO JALET

26 days x P64.00 x 12 mos.
= P19,968.00 x 1/12
= P1,664.00

6) VALERIANO MIJAS

26 days x P64.00 x 12 mos.
= P19,968.00 x 1/12
= P1,664.00

7) PEDRO ROCHE

26 days x P64.00 x 12 mos.
= P19,968.00 x 1/12
= P1,664.00

8) RODOLFO MONTECLARO

26 days x P64.00 x 12 mos.
= P19,968.00 x 1/12
= Pl,664.00

9) JOSE NAVAL

26 days x P64.00 x 3 mos.
= P4,992.00 x 1/12
= P 416.00

"2. The complaints of Edgar Juezon (sic), Lordito Tadtad and Ramon Tabada are hereby dismissed as prayed for by said complainants.

"3. The complainants for illegal dismissal filed by Victorio Lunzaga (Lonzaga) and Alfredo Jalet (Jalit) are hereby dismissed for having been rendered moot and academic by Our decision in Case No. RAB-11-05-00352-89.

"4. The complaints of Macabodbod and Asejo for illegal dismissal are hereby DISMISSED for lack of merit.

"5. The charge of unfair labor practice is hereby dismissed for lack of merit.

"SO ORDERED."[9]

As noted by the Solicitor General, private respondents filed their motion for reconsideration, which was denied.[10] We find, however, that herein petitioners did not move for reconsideration, as the petition did not so indicate and none appears on the records before us.

Filing a petition for *certiorari* under Rule 65 without first moving for reconsideration of the assailed resolution generally warrants the petition's outright dismissal. As we consistently held in numerous cases,[11] a motion for reconsideration by a concerned party is indispensable for it affords the NLRC an opportunity to rectify errors or mistakes it might have committed before resort to the courts can be had.

It is settled that *certiorari* will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against acts of public respondents.[12] Here, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the impugned resolution, based on palpable or patent errors, to be made under oath and filed within ten (10) days from receipt of the questioned resolution of the NLRC, a procedure which is jurisdictional.[13] Further, it should be stressed that without a motion for reconsideration seasonably filed within the ten-day reglementary period, the questioned order, resolution or decision of NLRC, becomes final and executory after ten (10) calendar days from receipt thereof.[14] Moreover, even if procedural lapses were to be set aside, we find no cogent reason sufficient to justify a departure from public respondent's decision, as hereafter elucidated.

In this recourse, petitioners impute the following errors on the part of public respondent:

I

> "THAT THE HONORABLE COMMISSION ERRED IN HOLDING THAT THE DISMISSAL OF FIVE COMPLAINANTS WERE JUSTIFIED IN VIEW OF THE FACT THAT THEIR COMPLAINT HAVE BEEN RENDERED MOOT AND ACADEMIC BY ITS DECISION IN CASE NO. RAB-05-00353-89.

II

> THAT HONORABLE COMMISSION AGAIN ERRED IN DISMISSING THE COMPLAINT OF THE COMPLAINANTS MACABODBOD AND ASEJO FOR LACK OF MERIT.

III

THE HONORABLE COMMISSION SERIOUSLY ERRED IN AFFIRMING THE DECISION OF THE LABOR ARBITER DISMISSING PETITIONER'S CHARGE OF UNFAIR LABOR PRACTICE AGAINST THE RESPONDENT CORPORATION.

IV

QUESTION OF LAW."[15]

In petitions for *certiorari* under Rule 65 of the Rules of Court, it may be noted that "want of jurisdiction" and "grave abuse of discretion,"[16] and not merely reversible error, are the proper grounds for review. The respondent acts without jurisdiction if he does not have the legal authority to decide a case. There is excess of jurisdiction if the respondent, having the power to determine the case, oversteps his lawful authority. And there is grave abuse of discretion where the respondent acts in a capricious, whimsical, arbitrary or despotic manner, in effect equivalent to lack of jurisdiction.[17] Here, petitioners neither assail the jurisdiction of public respondent nor attribute any grave abuse of discretion on the part of the labor tribunal. Necessarily, this petition must fail, for lack of substantial requisites under Rule 65.

Nevertheless, if only to cast aside all doubts for the benefit of the concerned workers, we assayed into the merits of the case. As properly stated by the Solicitor General, the point of inquiry here is whether petitioners are regular or project employees of respondent company.

The Labor Code defines regular, project and casual employees as follows:

> "ART 280. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or

> desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> And employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists." *(Italics supplied.)*

Thus, regular employees are those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer even if the parties enter into an agreement stating otherwise.[18] In contrast, project employees are those whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee, or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.[19]

Furthermore, Policy Instruction No. 20,[20] which was in force during the period of petitioners' employment, stated:

> "Project employees are those employed in connection with a particular construction project. Non-project (regular) employees are those employed by a construction company without reference to any particular project.
>
> Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain clearance from the Secretary of Labor in connection with such termination. What is required of the

company is report to the nearest Public Employment Office for statistical purposes."

In the case at bar, the contracts of employment of the petitioners attest to the fact that they had been hired for specific projects, and their employment was coterminous with the completion of the project for which they had been hired. Said contracts expressly provide that the workers' tenure of employment would depend on the duration of any phase of the project or the completion of the awarded government construction projects in any of their planned phases. Further, petitioners were informed in advance that said project or undertaking for which they were hired would end on a stated or determinable date. Besides, public respondent noted that respondent company regularly submitted reports of termination of services of project workers to the regional office of the labor department as required under Policy Instruction No. 20. This compliance with the reportorial requirement confirms that petitioners were project employees.

Considering that petitioners were project employees, whose nature of employment they were fully informed about, at the time of their engagement, related to a specific project, work or undertaking, their employment legally ended upon completion of said project. The termination of their employment could not be regarded as illegal dismissal.

WHEREFORE, the instant petition is **DISMISSED**, and the assailed **RESOLUTION** of respondent NLRC dated May 17, 1991, is **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, *J.*, *(Chairman),* Mendoza, Buena, and De Leon, Jr., *JJ.*, concur.

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[1] Sometimes spelled as Juezan in the records.
[2] Sometimes spelled as Ramsi in the records.

[3] Sometimes spelled as Gerundio in the records.
[4] Sometimes spelled as Miyas in the records.
[5] Rollo, pp. 26-27.
[6] ATU-TUCP vs. Hon. Musib Buat, GR-101357, September 23, 1991.
[7] Supra, note 1 at 31-32. One worker, Rogelio Tantuan, had earlier withdrawn his complaint.
[8] Id. at 50.
[9] Id. at 56-58.
[10] Id. at 126.
[11] Veloso vs. China Airlines, G.R. No. 104302, July 14, 1999, p. 4; Escorpizo vs. University of Baguio, et al., G.R. No. 121962, April 30, 1999, p. 3; Manila Midtown Hotel & Land Corp. vs. NLRC, 288 SCRA 259, 264 (1998); ABS-CBN Employees Union vs. NLRC, 276 SCRA 123, 129 (1997); Gonpu Services Corporation vs. NLRC, 266 SCRA 657, 600 (1997)
[12] Rules of Court, Rule 65, Sec. 1.
[13] Rule VII, Section 14, NLRC Rules of Procedure, promulgated August 31, 1990 and took effect on October 9, 1990.
[14] Rule VIII, Section 2(a) NLRC Rules of Procedure.
[15] Rollo, p. 11.
[16] Rule 65, Section 1, Rules of Court.
[17] I. F. Regalado, Remedial Law Compendium, p. 707 (1997)
[18] San Miguel Corporation vs. NLRC, G.R. 125606, October 7, 1998, p. 5.
[19] Villa vs. NLRC, 284 SCRA 105, 127 (1998)
[20] DOLE Department Order No. 19 issued on April 1, 1993 now governs the employment of project employees in the construction industry.