SUPREME COURT
FIRST DIVISION

BAGUIO COUNTRY CLUB CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 71664
February 28, 1992

NATIONAL LABOR RELATIONS COMMISSION, ASSOCIATED LABOR UNION (ALU) AND JIMMY CALAMBA,
***Respondents*.**
x----------x

D E C I S I O N

MEDIALDEA, *J.*:

This Petition for *Certiorari* seeks to annul and set aside the Resolution issued by the respondent National Labor Relations Commission dated June 10, 1985 dismissing the appeal of petitioner for lack of merit and affirming in toto the decision of the Executive Labor Arbiter dated September 15, 1982 declaring private respondent Calamba as a regular employee entitled to reinstatement to the position of gardener without loss of seniority and with full backwages, benefits and privileges from the time of his dismissal up to reinstatement including 13th month pay.

The antecedent facts are as follows:

Petitioner Baguio Country Club Corporation (corporation) is a recreational establishment certified by the Ministry of Labor and Employment as an "entertainment-service" establishment. Respondent National Labor Relations Commission (Commission) is a government instrumentality created by law, impleaded in its official capacity, while private respondent Associated Labor Union (union) is a duly registered labor organization and private respondent Jimmy Calamba is an employee of the petitioner corporation as laborer, dishwasher, and gardener.

Private respondent Jimmy Calamba was employed on a day to day basis in various capacities as laborer and dishwasher for a period of ten (10) months from October 1, 1979 to July 24, 1980. On September 1, 1980 to October 1, 1980, private respondent Calamba was hired as a gardener and rehired as such on November 15, 1980 to January 4, 1981 when he was dismissed by the petitioner corporation. (see Rollo, pp. 28-36).

On August 3, 1981, private respondent Jimmy Calamba assisted by private respondent union instituted a complaint against petitioner corporation with the Ministry of Labor (now Department of Labor and Employment), Baguio District Office, Baguio City for unfair labor practice, illegal dismissal and non-payment of 13th month pay for 1979 and 1980.

The Executive Labor Arbiter Sotero L. Tumang rendered a decision on September 15, 1982 declaring private respondent Calamba as a regular employee and ordering petitioner to reinstate private respondent to the position of gardener without loss of seniority and with full backwages, benefits and privileges from the time of his dismissal up to reinstatement including 13th month pay.

Labor Arbiter Tumang found as follows:

"After a careful perusal of the facts presented by the parties, we find the complaint for illegal dismissal and nonpayment of thirteenth (13th) month pay, meritorious for the following reasons:

"1. Complainant Jimmy Calamba hag attained regular status as an employee of the Club on account of the nature of the job he was hired, to perform continuously and on staggered basis for a span of thirteen months. True that there were employment contracts executed between the Club and the complainant indicating the period or the number of days the complainant is being needed but what is to be considered is not the agreement, written or otherwise, of the parties in determining the regularity or casualness of a job but it should be the nature of the job. Clearly, the work of a gardener is not a seasonal or for a specific period undertaking but it is a whole year round activity. We must not lose sight of the fact that the Baguio Country Club Corporation is an exclusive Club with sustaining members who avails (sic) of its facilities the whole year round and it is necessary, as has been observed and of common knowledge, that the gardens including the green of its golf course where the complainant was assigned must be properly kept and maintained.

"2. Being a regular employee with more than one (1) year length of service with the respondent. Jimmy Calamba could not be terminated without a just or valid cause. This is so explicit in our Constitution that the security of tenure of a worker must be safeguarded and protected and Jimmy Calamba should enjoy no less protection.

"3. Jimmy Calamba was dismissed without any written clearance from the Ministry of Labor and Employment prior to his termination. Worse, the respondent fired the complainant from his job due to the a (sic) alleged expiration of his employment contract ten (10) times but not even a single report of his dismissal as mandated by law was submitted to the Ministry of Labor and Employment.

"4. The Company did not refute the claim of Jimmy Calamba for payment of his thirteenth (13th) month pay under P.D. 851 nor presented any report of compliance to that effect with the Ministry of Labor and Employment and, therefore, he must be paid correspondingly." (Rollo. pp. 39-40).

Hence, the petitioner interposed an appeal to the respondent Commission.

On June 10, 1985, after finding that there existed no sufficient justification to disturb the appealed decision, the respondent Commission rendered a resolution dismissing the appeal for lack of merit.

Hence, this present petition raising four (4) assignment of errors. which are as follows:

"I

"THAT THE RESPONDENT COMMISSION GRAVELY ERRED IN HOLDING THAT PRIVATE RESPONDENT JIMMY CALAMBA WAS A `CASUAL' EMPLOYEE AND HAD ATTAINED THE STATUS OF A REGULAR EMPLOYEE, DESPITE THE INCONTROVERTIBLE FACT THAT SAID PRIVATE RESPONDENT WAS A CONTRACTUAL AND SEASONAL EMPLOYEE.

"II

"THAT THE RESPONDENT COMMISSION GRAVELY ERRED IN HOLDING THAT THE CONCLUSIONS OF THE EXECUTIVE LABOR ARBITER WERE FULLY SUPPORTED BY THE EVIDENCE AND IN UPHOLDING THE REINSTATEMENT OF PRIVATE RESPONDENT JIMMY CALAMBA.

"III

"THAT THE RESPONDENT COMMISSION GRAVELY ERRED IN HOLDING THAT THE DISMISSAL OF PRIVATE RESPONDENT JIMMY CALAMBA REQUIRED PRIOR CLEARANCE FROM THE MINISTRY OF LABOR AND EMPLOYMENT EACH TIME HIS CONTRACT OF EMPLOYMENT EXPIRED.

"IV

"THAT THE RESPONDENT COMMISSION GRAVELY ERRED IN NOT HOLDING THAT PRIVATE RESPONDENT ASSOCIATED LABOR UNION HAS NO LEGAL PERSONALITY TO FILE THIS CASE FOR PRIVATE RESPONDENT JIMMY CALAMBA BEFORE THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS COMMISSION, AS SAID PRIVATE RESPONDENT BEING A CONTRACTUAL EMPLOYEE IS EXPRESSLY EXCLUDED FROM THE BARGAINING UNIT UNDER THE COLLECTIVE BARGAINING AGREEMENT." (Rollo. pp. 98-99).

Petitioner maintains that private respondent Calamba was a contractual employee whose employment was for a fixed and specific period as set forth and evidenced by the private respondent's contracts of employment, the pertinent portions of which are quoted as follows:

x x x

"The employment may be terminated at any time without liability to the Baguio Country Club other than for salary actually earned up to and including the date of last service.

"His/her employment shall be on a day to day BASIS for a temporary period subject to termination at any time at the discretion of the Baguio Country Club Corporation.

"(Rollo, p. 7).

In addition, petitioner stresses that there was absolutely no oral or documentary evidence to support the conclusion of the Executive Labor Arbiter which was subsequently affirmed by the respondent Commission that private respondent Calamba has rendered thirteen (13) months of continuous service.

On the contrary, respondent Commission through the Solicitor General argues that private respondent Calamba, having rendered services as laborer, gardener and dishwasher for more than one (1)

year, was a regular employee at the time his employment was terminated.

Moreover, the nature of private respondent Calamba's employment as laborer, gardener, and dishwasher pertains to a regular employee because they are necessary or desirable in the usual business of petitioner as a recreational establishment.

The pivotal issue therefore, is whether or not the private respondent Jimmy Calamba has acquired the status of a regular employee at the time his employment was terminated.

After a careful review of the records of this case, the Court finds no merit in the petition and holds that the respondent Commission did not gravely abuse its discretion when it affirmed in toto the decision of the labor arbiter.

The law on the matter is Article 280 of the Labor Code which defines regular and casual employment 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.
>
> "An 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 actually exists."

> "This provision reinforces the Constitutional mandate to protect the interest of labor. Its language evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual status for as long as convenient. Thus, contrary agreements notwithstanding, an employment is deemed regular when the activities performed by the employee are usually necessary or desirable in the usual business or trade of the employer. Not considered regular are the so-called "project employment" the completion or termination of which is more or less determinable at the time of employment, such as those employed in connection with a particular construction project, and seasonal employment which by its nature is only desirable for a limited period of time. However, any employee who has rendered at least one year of service, whether continuous or intermittent, is deemed regular with respect to the activity he performed and while such activity actually exists.

The primary standard, therefore, of determining a regular employment, is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists." (De Leon vs. National Labor Relations Commission, G.R. No. 70705, August 21, 1989, 176 SCRA 615, 620-621).

In the case at bar, the petitioner corporation, which is certified by the Ministry of Labor and Employment as an "entertainment service" establishment, claims that private respondent was contracted for a

fixed and specific period. However, the records reveal that the private respondent was repeatedly re-hired to perform tasks ranging from dishwashing and gardening. aside from performing maintenance work.

Such repeated rehiring and the continuing need for his service are sufficient evidence of the necessity and indispensability of his service to the petitioner's business or trade.

The law demands that the nature and entirety of the activities performed by the employee be considered. It is not tenable to argue that the aforementioned tasks of private respondent are not necessary in petitioner's business as a recreational establishment, just as it cannot be said that only those who are directly involved in providing entertainment service may be considered as necessary employees. Otherwise, there would have been no need for the regular maintenance section of petitioner corporation.

Furthermore, the private respondent performed the said tasks which lasted for more than one year, until early January, 1981 when he was terminated. Certainly, by this fact alone he is entitled by law to be considered a regular employee.

Owing to private respondent's length of service with the petitioner corporation, he became a regular employee, by operation of law, one year after he was employed. It is more in consonance with the intent and spirit of the law to rule that the status of regular employment attaches to the casual employee on the day immediately after the end of his first year of service. To rule otherwise is to impose a burden on the employee which is not sanctioned by law. (see Kimberly Independent Labor Union for Solidarity, Activism and Nationalism in Line Industries and Agriculture vs. Drilon, G.R. No. 77629, May 9, 1990, 185 SCRA 190, 203-204).

It is of no moment that private respondent was told when he was hired that his employment would only be "on a day to day basis for a temporary period" and may be terminated at any time subject to the petitioner's discretion. Precisely, the law overrides such conditions which are prejudicial to the interest of the worker. Evidently, the employment contracts entered into by private respondent with the

petitioner have the purpose of circumventing the employee's security of tenure. The Court therefore, rigorously disapproves said contracts which demonstrate a clear attempt to exploit the employee and deprive him of the protection sanctioned by the Labor Code.

It is noteworthy that what determines whether a certain employment is regular or casual is not the will and word of the employer, to which the desperate worker often accedes. It is the nature of the activities performed in relation to the particular business or trade considering all circumstances, and in some cases the length of time of its performance and its continued existence. (see De Leon vs. NLRC, ibid).

All premises considered, the Court is convinced that the assailed resolution of the respondent Commission is not tainted with arbitrariness that would amount to grave abuse of discretion or lack of jurisdiction and therefore, We find no reason to disturb the same.

ACCORDINGLY, the Petition is **DISMISSED** for lack of merit.

SO ORDERED.

Narvasa, *C.J.*, Cruz and Griño-Aquino, *JJ.*, concur.