

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ROGELIO CARAMOL,
*Petitioner,***

-versus-

**G.R. No. 102973
August 24, 1993**

**NATIONAL LABOR RELATIONS
COMMISSION and ATLANTIC GULF
and PACIFIC CO. OF MANILA, INC.,
*Respondents.***

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D E C I S I O N

BELLOSILLO, J.:

The controversy as to whether petitioner is a regular or casual employee arises from the conflicting interpretations by the parties of Art. 280 of the Labor Code, as amended. The article provides —

“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 service 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.”

Petitioner Rogelio Caramol, a worker hired by respondent Atlantic Gulf and Pacific Co. of Manila, Inc. (ATLANTIC GULF), on a “project-to-project” basis but whose employment was renewed forty-four (44) times by the latter, seeks the reversal of the Decision of public respondent National Labor Relations Commission (NLRC) dated 31 October 1991 in NLRC NCR 00-01-04703-88^[1] which reversed and set aside the Decision of the Labor Arbiter.

The Labor Arbiter had earlier declared respondent ATLANTIC GULF guilty of unfair labor practice, ordered it to cease and desist from further committing unfair labor practice against petitioner, declared illegal the constructive dismissal of petitioner and directed respondent ATLANTIC GULF to immediately reinstate petitioner to his former position without loss of seniority rights and with full back wages in the amount of P68,826.94 as of 29 November 1989.^[2]

The factual findings of the Labor Arbiter show that petitioner was hired by respondent ATLANTIC GULF on 2 June 1983 for the position of rigger. Until the occurrence of the strike on 10 May 1986, his last assignment was at respondent ATLANTIC GULF’s plant in Batangas.

Petitioner claims that because of his involvement in unionism, particularly in actively manning the picket lines, he was among those who were not re-admitted after the strike.

On the other hand, respondent ATLANTIC GULF contends that petitioner was one of the several thousands of workers who were hired on a “project-to-project” basis and whose employment was covered by Project Employment Contract for a particular project and for a definite period of time. On 15 May 1986 private respondent dispensed with the services of petitioner claiming as justification the completion of the Nauru project to which petitioner was assigned and the consequent expiration of the employment contract.

In reversing the Labor Arbiter, public respondent NLRC declared in the dispositive portion of its questioned decision thus —

“WHEREFORE, based on the foregoing considerations, the decision appealed from is hereby REVERSED and SET ASIDE, and finding the claim of complainant to be without legal and factual basis.”

According to public respondent NLRC, petitioner is a project employee falling under the exception of Art. 280 of the Labor Code, as amended, explaining that —

“As correctly asserted by respondent-company, Mr. Caramol’s services have been fixed for a specific project shown in the contracts of employment. The principle of party autonomy must not be interfered with absent any showing of violation of law, public policy and jurisprudence. ‘A contract duly entered into should be respected, since a contract is the law between the parties’ (Pakistan International Airlines Corp. vs. Ople, G.R. No. 61594, Sept. 28, 1990).

“The exception under Article 280 of the Labor Code is precisely designed to meet an exigency like in the case at bar.

“Under the Labor Code as well as the Civil Code of the Philippines, `the validity and propriety of contracts and obligations with a fixed or definite period are recognized, and imposes no restraints on the freedom of the parties to fix the duration of a contract, whatever its object, be it specie, food or services, except the general admonition against stipulations contrary to law, morals, good custom, public order or public

policy' (Brent School, Inc. vs. Zamora, G.R. No. 48494, Feb. 5, 1990).

“Contract workers are not considered regular. Their services depend upon availability of a project to be undertaken. Thus, it would be unjust to retain an employee in the payroll while waiting for another project.”

Petitioner now insists that public respondent NLRC gravely abused its discretion and committed serious errors of law and that its questioned decision is contrary to the jurisprudential doctrine enunciated in *Magante vs. NLRC*^[3] where it was held that the “project” employee therein was deemed a regular employee considering the attendant circumstances, i.e., the employee was assigned to perform tasks which are usually necessary or desirable in the usual business or trade of the employer; said assignments did not end on a project to project basis, although the contrary was made to appear through the signing of separate employment contracts; there were no reports of termination submitted to the nearest public employment office every time employment was terminated due to the completion of the project.

We grant the petition.

There is no question that stipulation on employment contract providing for a fixed period of employment such as “project-to-project” contract is valid provided the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.^[4] However, where from the circumstances it is apparent that periods have been imposed to preclude the acquisition of tenurial security by the employee, they should be struck down as contrary to public policy, morals, good custom or public order.

In the case before us, we find sufficiently established circumstances showing that the supposed fixed period of employment by way of a

project-to-project contract has been imposed to preclude acquisition of tenurial security by the petitioner. Accordingly, such arrangement must be struck down as contrary to public policy. After a careful perusal of the records, we sustain the findings of the Labor Arbiter that —

“The records of the case established the fact that during the employment of complainant with the respondent company he was made to sign a project employment contract. This practice started from the time he was hired in 1973 up to May 10, 1986 when the AG & P Workers and Employees Union staged a strike. Expressed differently this practice of the respondent insofar as the complainant is concerned has been going on continuously for thirteen (13) long years. This Office is of the considered belief that the nomenclature by which he was addressed by the respondent has already attained a regular status of employment. In addition to his length of service the documentary evidence on record established the fact that complainant’s job is both necessary and desirable to the business engaged in by the respondent.

Admittedly, the “project-to-project” employment of petitioner was renewed several times, forty-four (44) project contracts^[5] according to him. Private respondent points to this successive employment as evidence that petitioner is a project employee in its projects. It is asserted that being in the construction industry, it is not unusual for private respondent and other similar companies to hire employees or workers for a definite period only, or whose employment is co-terminus with the completion of a specific project as recognized by Art. 280 of the Labor Code.

However, with the successive contracts of employment where petitioner continued to perform the same kind of work, i.e., as rigger throughout his period of employment, it is clearly manifest that petitioner’s tasks were usually necessary or desirable in the usual business or trade of private respondent. There can therefore be no escape from the conclusion that petitioner is a regular employee of private respondent ATLANTIC GULF.

In this regard, we need only reiterate our ruling in *Baguio Country Club Corporation vs. NLRC*^[6] that —

“The primary standard 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).

“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 private respondent performed the said task which lasted for more than one year, 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 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*).”

Moreover, notwithstanding its claim that petitioner was successively employed, private respondent failed to present any report of termination. On this point, the pronouncement in *Magante vs. NLRC*^[7] is of singular relevance to the instant case:

“Moreover, if petitioner were employed as a ‘project employee’ private respondent should have submitted a report of termination to the nearest public employment office every time his employment is terminated due to completion of each construction project, as required by Policy Instruction No. 20, which provides:

‘Moreover, the company is not required to obtain a clearance from the Secretary of Labor in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes’ (Emphasis Supplied)

“Throughout the duration of petitioner's employment, there should have been filed as many reports of termination as there were construction projects actually finished if it were true that petitioner Telesforo Maganto was only was only a project worker.”

We thus hold significant as to prejudice the cause of private respondent the absence of any such termination reports.

In ignoring or disregarding the existing jurisprudence on regular employment, particularly the Magante decision, by reversing the decision of the Labor Arbiter, public respondent NLRC gravely abused its discretion.

Respondent further claims that since the appeal was filed twenty-nine (29) days from receipt of the NLRC decision by petitioner, the same should be dismissed as having been filed out of time, alluding to the penultimate paragraph of Art. 223 of the Labor Code which states that “[t]he decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.”

This is not correct. On the contrary, the instant petition is filed pursuant to Sec. 1, Rule 65, of the Rules of Court which may be done within a reasonable time from receipt of the subject decision, and a period of three (3) months is considered reasonable.^[8] The fact that the assailed decision becomes final and executory after a ten-day period does not preclude the adverse party from challenging it by way of an original action for *certiorari* under Rule 65 of the Rules of Court. He may even further pray for the issuance of a restraining order or a temporary injunction to prevent the immediate execution of the assailed decision.

WHEREFORE, the Petition is **GRANTED**. Consequently, the Decision of respondent National Labor Relations Commission dated 31 October 1991 is hereby **REVERSED** and **SET ASIDE**. The Decision of the Labor Arbiter dated 29 November 1989 is **AFFIRMED** and **REINSTATED**.

SO ORDERED.

Cruz , Griño-Aquino, Davide, Jr. and Quiason, JJ., concur.

[1] Rollo, p. 36.

[2] Rollo, p. 27.

[3] G.R. No. 74969, 7 May 1990; 185 SCRA 21.

[4] Brent School, Inc. vs. Zamora, G.R. No. L-48494, 5 February 1990; 181 SCRA 702, 716.

[5] Reply, Rollo, pp. 105-112.

[6] G.R. No. 71664, 28 February 1992; 206 SCRA 643, 649-651.

[7] See Note 3, p. 28.

[8] Philec Workers' Union vs. Young, G.R. No. 101734, 22 January 1992.

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